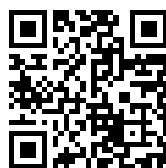


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Highways

23

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Revised as of April 1, 1985



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## Highways

### 23

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CONTAINING  
A CODIFICATION OF DOCUMENTS  
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AS OF APRIL 1, 1985

*With Ancillaries*

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**WASHINGTON : 1985**

# Table of Contents

|                                                                                                                                  | <i>Page</i> |
|----------------------------------------------------------------------------------------------------------------------------------|-------------|
| Explanation .....                                                                                                                | v           |
| Title 23:                                                                                                                        |             |
| Chapter I—Federal Highway Administration, Department of Transportation.....                                                      | 3           |
| Chapter II—National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation ..... | 501         |
| Chapter III—National Highway Traffic Safety Administration, Department of Transportation.....                                    | 575         |
| Subject Index.....                                                                                                               | 591         |
| Finding Aids:                                                                                                                    |             |
| Material Approved for Incorporation by Reference .....                                                                           | 613         |
| Table of CFR Titles and Chapters.....                                                                                            | 615         |
| Alphabetical List of Agencies Appearing in the CFR.....                                                                          | 631         |
| List of CFR Sections Affected .....                                                                                              | 639         |

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***Cite this Code CFR***  
***thus: 23 CFR 1.1***

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# Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

## ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

|                                |                 |
|--------------------------------|-----------------|
| Title 1 through Title 16.....  | as of January 1 |
| Title 17 through Title 27..... | as of April 1   |
| Title 28 through Title 41..... | as of July 1    |
| Title 42 through Title 50..... | as of October 1 |

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*What is incorporation by reference?* Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (49 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

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**JOHN E. BYRNE,**

*Director,*

*Office of the Federal Register.*

April 1, 1985.





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## THIS TITLE

Title 23—HIGHWAYS is composed of one volume. The contents of this volume represent those current regulations of the National Highway Traffic Safety Administration and the Federal Highway Administration, Department of Transportation issued under this title of the CFR as of April 1, 1985.

A subject index to the Federal Highway Administration regulations in Chapters I and II appears in the back of this volume.

For this volume Beverly Fayson was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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# Title 23—Highways

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|                                                                                                                                 | <i>Part</i> |
|---------------------------------------------------------------------------------------------------------------------------------|-------------|
| CHAPTER I—Federal Highway Administration, Department of Transportation.....                                                     | 1           |
| CHAPTER II—National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation..... | 1204        |
| CHAPTER III—National Highway Traffic Safety Administration, Department of Transportation.....                                   | 1309        |

CROSS REFERENCES: Regulations concerning construction and maintenance of roads on Indian lands, Bureau of Indian Affairs, Department of the Interior: See Indians, 25 CFR Part 170.

Regulations of the Bureau of Land Management concerning rights-of-way for roads and highways: See Public Lands, Interior, 43 CFR Part 2800.

Employment and Training Administration, Department of Labor: See Employees' Benefits, 20 CFR Chapter V.



# CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

EDITORIAL NOTE: For nomenclature changes to Chapter I, see 35 FR 18719, Dec. 10, 1970, and 40 FR 45805, Oct. 3, 1975.

## SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

| <i>Part</i> |                                                                                                                | <i>Page</i> |
|-------------|----------------------------------------------------------------------------------------------------------------|-------------|
| 1           | General.....                                                                                                   | 6           |
| 11          | Accounting.....                                                                                                | 11          |
| 12          | Federal-aid highway programs: State internal<br>audit responsibilities.....                                    | 12          |
| 17          | Recordkeeping and retention requirements for<br>Federal-aid highway, records of State highway<br>agencies..... | 15          |

## SUBCHAPTER B—PAYMENT PROCEDURES

|     |                                                                                            |    |
|-----|--------------------------------------------------------------------------------------------|----|
| 130 | Advance of funds.....                                                                      | 17 |
| 140 | Reimbursement.....                                                                         | 18 |
| 160 | State fiscal procedures and reports.....                                                   | 32 |
| 172 | Administration of negotiated contracts .....                                               | 34 |
| 190 | Incentive payments for controlling outdoor adver-<br>tising on the interstate system ..... | 37 |

## SUBCHAPTER C—CIVIL RIGHTS

|     |                                                                                      |    |
|-----|--------------------------------------------------------------------------------------|----|
| 200 | Title VI program and related statutes—implemen-<br>tation and review procedures..... | 38 |
| 230 | External programs .....                                                              | 41 |

## SUBCHAPTER D—NATIONAL HIGHWAY INSTITUTE

|     |                                      |    |
|-----|--------------------------------------|----|
| 260 | Education and training programs..... | 84 |
|-----|--------------------------------------|----|

## SUBCHAPTER E—PLANNING

|     |                                          |    |
|-----|------------------------------------------|----|
| 420 | Program management and coordination..... | 90 |
| 450 | Planning assistance and standards.....   | 91 |

*Part*

|     |                                                                                                     |
|-----|-----------------------------------------------------------------------------------------------------|
| 460 | Public road mileage for apportionment of highway safety funds .....                                 |
| 470 | Highway systems .....                                                                               |
| 476 | Interstate highway system .....                                                                     |
| 480 | Use and disposition of property acquired by States for modified or terminated highway projects..... |
| 490 | Special programs .....                                                                              |

**SUBCHAPTER F—RESEARCH AND DEVELOPMENT**

|     |                                                                     |
|-----|---------------------------------------------------------------------|
| 511 | Research and development (R & D) studies and programs; general..... |
|-----|---------------------------------------------------------------------|

**SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS**

|     |                                                                                      |
|-----|--------------------------------------------------------------------------------------|
| 620 | Engineering .....                                                                    |
| 625 | Design standards for highways.....                                                   |
| 626 | Pavement design policy .....                                                         |
| 630 | Preconstruction procedures.....                                                      |
| 633 | Required contract provisions .....                                                   |
| 635 | Construction and maintenance .....                                                   |
| 637 | Construction inspection and approval.....                                            |
| 640 | Certification acceptance.....                                                        |
| 642 | Secondary road plan .....                                                            |
| 645 | Utilities.....                                                                       |
| 646 | Railroads .....                                                                      |
| 650 | Bridges, structures, and hydraulics.....                                             |
| 652 | Pedestrian and bicycle accommodations and projects .....                             |
| 655 | Traffic operations.....                                                              |
| 656 | Carpool and vanpool projects .....                                                   |
| 657 | Certification of size and weight enforcement .....                                   |
| 658 | Truck size and weight, route designations—length, width and weight limitations ..... |
| 659 | Certification of speed limit enforcement .....                                       |
| 660 | Special programs (Direct Federal).....                                               |
| 661 | Great River Road .....                                                               |
| 666 | Defense bridges and critical highway facilities reports.....                         |
| 667 | Public lands highways funds.....                                                     |
| 668 | Emergency relief program .....                                                       |

**SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT**

|     |                                                     |
|-----|-----------------------------------------------------|
| 710 | Right-of-way—general .....                          |
| 712 | The acquisition function .....                      |
| 713 | Right-of-way—the property management function ..... |
| 720 | Appraisal .....                                     |
| 740 | Relocation assistance.....                          |

## **Federal Highway Administration, DOT**

| <i>Part</i>                                   |                                                                                                                                | <i>Page</i> |
|-----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|-------------|
| 750                                           | Highway beautification .....                                                                                                   | 421         |
| 751                                           | Junkyard control and acquisition.....                                                                                          | 440         |
| 752                                           | Landscape and roadside development .....                                                                                       | 445         |
| 770                                           | Air quality conformity and priority procedures for<br>use in Federal-aid highway and federally-funded<br>transit programs..... | 448         |
| 771                                           | Environmental impact and related procedures.....                                                                               | 452         |
| 772                                           | Procedures for abatement of highway traffic<br>noise and construction noise .....                                              | 467         |
| 777                                           | Mitigation of environmental impacts to privately<br>owned wetlands .....                                                       | 472         |
| 790                                           | Public hearings and location/design approval.....                                                                              | 474         |
| <br><b>SUBCHAPTER I—PUBLIC TRANSPORTATION</b> |                                                                                                                                |             |
| 810                                           | Mass transit and special use highway projects .....                                                                            | 482         |
| 820                                           | Rural highway public transportation demonstra-<br>tion program .....                                                           | 487         |
| 825                                           | Public transportation for nonurbanized areas.....                                                                              | 491         |
| <br><b>SUBCHAPTER J—HIGHWAY SAFETY</b>        |                                                                                                                                |             |
| 920                                           | Pavement marking demonstration program.....                                                                                    | 495         |
| 922                                           | Safer off-system roads program .....                                                                                           | 496         |
| 924                                           | Highway safety improvement program.....                                                                                        | 498         |
|                                               | Subject Index .....                                                                                                            | 591         |



## SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

### PART 1—GENERAL

#### Sec.

- 1.1 Purpose.
- 1.2 Definitions.
- 1.3 Federal-State cooperation; authority of State highway departments.
- 1.4 Cooperation of governmental instrumentalities.
- 1.5 Information furnished by State highway departments.
- 1.7 Urban area boundaries.
- 1.8 [Reserved]
- 1.9 Limitation on Federal participation.
- 1.11 Engineering services.
- 1.23 Rights-of-way.
- 1.27 Maintenance.
- 1.28 Diversion of highway revenues.
- 1.31 Payments.
- 1.32 Issuance of directives.
- 1.33 Conflicts of interest.
- 1.34 Secondary road plan.
- 1.35 Bonus program.
- 1.36 Compliance with Federal laws and regulations.
- 1.37 Delegation of authority.
- 1.38 Application of regulations.

**AUTHORITY:** Sec. 315, 72 Stat. 915; 23 U.S.C. 315; 49 CFR 1.48(b), unless otherwise noted.

**SOURCE:** 25 FR 4162, May 11, 1960, unless otherwise noted.

#### § 1.1 Purpose.

The purpose of the regulations in this part is to implement and carry out the provisions of Federal law relating to the administration of Federal aid for highways.

#### § 1.2 Definitions.

(a) Terms defined in 23 U.S.C. 101(a), shall have the same meaning where used in the regulations in this part, except as modified herein.

(b) The following terms where used in the regulations in this part shall have the following meaning:

**Administrator.** The Federal Highway Administrator.

**Advertising policy.** The national policy relating to the regulation of outdoor advertising declared in title 23 U.S.C. 131.

**Advertising standards.** The "National Standards for Regulation by States of Outdoor Advertising Signs, Displays

and Devices Adjacent to the National System of Interstate and Defense Highways" promulgated by the Secretary (Part 20 of this chapter).

**Federal laws.** The provisions of 23, United States Code, and all other Federal laws, heretofore or hereafter enacted, relating to Federal aid highways.

**Latest available Federal census.** The latest available Federal decennial census, except for the establishment of urban area.

**Project.** An undertaking by a State highway department for highway construction, including preliminary engineering, acquisition of rights-of-way and actual construction, or for highway planning and research, or for other work or activity to carry out provisions of the Federal laws for administration of Federal aid for highways.

**Secondary road plan.** A plan for administration of Federal aid for highways on the Federal-aid secondary highway system pursuant to 23 U.S.C. 117.

**Secretary.** The Secretary of Transportation.

**State.** Any State of the United States, the District of Columbia or Puerto Rico.

**Urban area.** An area including a municipality or other urban place having a population of five thousand or more, as determined by the latest available published official Federal census, decennial or special, within boundaries to be fixed by the State highway department, subject to the approval of the Administrator.

[25 FR 4162, May 11, 1960, as amended at 50 FR 18719, Dec. 10, 1970]

#### § 1.3 Federal-State cooperation; authority of State highway departments.

The Administrator shall cooperate with the States, through their respective State highway departments, in the construction of Federal-aid highways. Each State highway department, maintained in conformity with 23 U.S.C. 302, shall be authorized, in

the laws of the State, to make final decisions for the State in all matters relating to, and to enter into, on behalf of the State, all contracts and agreements for projects and to take such other actions on behalf of the State as may be necessary to comply with the Federal laws and the regulations in this part.

**§1.4 Cooperation of governmental instrumentalities.**

The State highway department shall be responsible for any project to be undertaken with the cooperation of, or with funds provided by, any other governmental instrumentality.

**§1.5 Information furnished by State highway departments.**

At the request of the Administrator the State highway department shall furnish to him such information as the Administrator shall deem desirable in administering the Federal-aid highway program.

**§1.7 Urban area boundaries.**

Boundaries of an urban area shall be submitted by the State highway department and be approved by the Administrator prior to the inclusion in a program of any project wholly or partly in such area involving funds authorized for and limited to urban areas.

**§1.8 [Reserved]**

**§1.9 Limitation on Federal participation.**

(a) Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State law, the regulations in this title, and policies and procedures prescribed by the Administrator. Federal funds shall not be paid on account of any cost incurred prior to authorization by the Administrator to the State highway department to proceed with the project or part thereof involving such cost.

(b) Notwithstanding the provisions of paragraph (a) of this section the Administrator may, upon the request of a State highway department, approve the participation of Federal-aid funds in a previously incurred cost if he finds:

(1) That his approval will not adversely affect the public,

(2) That the State highway department has acted in good faith, and that there has been no willful violation of Federal requirements,

(3) That there has been substantial compliance with all other requirements prescribed by the Administrator, and full compliance with requirements mandated by Federal statute,

(4) That the cost to the United States will not be in excess of the cost which it would have incurred had there been full compliance, and

(5) That the quality of work undertaken has not been impaired.

(c) Any request submitted under paragraph (b) of this section shall be accompanied by a detailed description of the relevant circumstances and facts, and shall explain the necessity for incurring the costs in question.

[38 FR 18368, July 10, 1973]

**§ 1.11 Engineering services.**

(a) *Federal participation.* Costs of engineering services performed by the State highway department or any instrumentality or entity referred to in paragraphs (b) and (c) of this section may be eligible for Federal participation only to the extent that such costs are directly attributable and properly allocable to specific projects. Expenditures for the establishment, maintenance, general administration, supervision, and other overhead of the State highway department, or other instrumentality or entity referred to in paragraphs (b) and (c) of this section shall not be eligible for Federal participation.

(b) *Governmental engineering organizations.* The State highway department may utilize, under its supervision, the services of well-qualified and suitably equipped engineering organizations of other governmental instrumentalities for making surveys, preparing plans, specifications and estimates, and for supervising the construction of any project.

(c) *Railroad and utility engineering organizations.* The State highway department may utilize, under its supervision, the services of well-qualified and suitably equipped engineering or-

ganizations of the affected railroad companies for railway-highway crossing projects and of the affected utility companies for projects involving utility installations.

(d) *Private engineering organizations.* Private engineering organizations may be utilized on projects in accordance with requirements prescribed by the Administrator.

(e) *Responsibility of the State highway department.* The State highway department is not relieved of its responsibilities under Federal law and the regulations in this part in the event it utilizes the services of any engineering organization under paragraphs (b), (c) or (d) of this section.

### § 1.23 Rights-of-way.

(a) *Interest to be acquired.* The State shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation and maintenance of a project.

(b) *Use for highway purposes.* Except as provided under paragraph (c) of this section, all real property, including air space, within the right-of-way boundaries of a project shall be devoted exclusively to public highway purposes. No project shall be accepted as complete until this requirement has been satisfied. The State highway department shall be responsible for preserving such right-of-way free of all public and private installations, facilities or encroachments, except (1) those approved under paragraph (c) of this section; (2) those which the Administrator approves as constituting a part of a highway or as necessary for its operation, use or maintenance for public highway purposes and (3) informational sites established and maintained in accordance with § 1.35 of the regulations in this part.

(c) *Other use or occupancy.* Subject to 23 U.S.C. 111, the temporary or permanent occupancy or use of right-of-way, including air space, for nonhighway purposes and the reservation of subsurface mineral rights within the boundaries of the rights-of-way of Federal-aid highways, may be approved by the Administrator, if he determines that such occupancy, use or reservation is in the public interest and will not impair the highway or

interfere with the free and safe flow of traffic thereon.

### § 1.27 Maintenance.

The responsibility imposed upon the State highway department, pursuant to 23 U.S.C. 116, for the maintenance of projects shall be carried out in accordance with policies and procedures issued by the Administrator. The State highway department may provide for such maintenance by formal agreement with any adequately equipped county, municipality or other governmental instrumentality but such an agreement shall not relieve the State highway department of its responsibility for such maintenance.

### § 1.28 Diversion of highway revenues.

(a) *Reduction in apportionment.* If the Secretary shall find that any State has diverted funds contrary to 23 U.S.C. 126, he shall take such action as he may deem necessary to comply with said provision of law by reducing the first Federal-aid apportionment of primary, secondary and urban funds made to the State after the date of such finding. In any such reduction, each of these funds shall be reduced in the same proportion.

(b) *Furnishing of information.* The Administrator may require any State to submit to him such information as he may deem necessary to assist the Secretary in carrying out the provisions of 23 U.S.C. 126 and paragraph (a) of this section.

### § 1.31 Payments.

States may submit requests for payments of Federal funds claimed to be due on account of a project. Such requests shall be in the form of vouchers as prescribed by the Administrator, and shall be certified and accompanied with such supporting data as the Administrator may require. Such vouchers may be submitted from time to time as the work progresses and shall be submitted promptly after completion of the project to which the voucher pertains.

**§ 1.32 Issuance of directives.**

(a) The Administrator shall promulgate and require the observance of policies and procedures, and may take other action as he deems appropriate or necessary for carrying out the provisions and purposes of Federal laws, the policies of the Federal Highway Administration, and the regulations of this part.

(b) The Administrator or his delegated representative, as appropriate, is authorized to issue the following type of directives:

(1) Federal Highway Administration Regulations are issued by the Administrator or his delegate, as necessary, to implement and carry out the provisions of title 23, United States Code, relating to the administration of Federal aid for highways, direct Federal programs and State and community safety programs; and title 49, United States Code, relating to motor carrier safety; and other applicable laws and programs under his jurisdiction.

(2) Notices are temporary issuances transmitting one-time or short-term instructions or information which is expected to remain in effect for less than 90 days or for a predetermined period of time normally not to exceed one year.

(3) Orders are directives limited in volume and contain permanent or longlasting policy, instructions, and procedures. FHWA Orders are to be used primarily as internal FHWA directives.

(4) Joint Interagency Orders and Notices are used by FHWA and the National Highway Traffic Safety Administration (NHTSA) to issue joint policies, procedures, and information pertaining to the joint administration of the State and Community Highway Safety Program. Where necessary, other joint directives may be issued with other modal administrations within the Department of Transportation.

(5) Manuals are generally designed for use in issuing permanent or longlasting detailed policy and procedure. Some of the major manuals recognized by the FHWA Directives System follow:

(i) The Federal-Aid Highway Program Manual has been established to

assemble and organize program material of the type previously contained in the Policy and Procedure and Instructional Memoranda which will continue in effect until specifically revoked or published in the new manual. Regulatory material is printed in italics in the manual and also appears in this Code. Nonregulatory material is printed in delegate type.

(ii) The Administrative Manual covers all internal FHWA administrative support functions.

(iii) The Highway Planning Program Manual covers the methods and procedures necessary to conduct the highway planning functions.

(iv) The Research and Development Manual series entitled, "The Federally Coordinated Program of Research and Development in Highway Transportation" describes the FHWA research and development program.

(v) The External Audit Manual provides guidance to FHWA auditors in their review of State programs and processes.

(vi) The Civil Rights and Equal Opportunity Manual provides guidance to FHWA and State Civil Rights and Equal Employment Opportunity Officers.

(vii) The BMCS Operations Manual provides program guidance for all field employees assigned to the motor carrier safety program.

(viii) The Highway Safety Program Manual, issued jointly by FHWA and NHTSA, contains volumes relating to the joint administration of the program.

(6) Handbooks are internal operating instructions published in book form where, because of the program area covered, it is desirable to provide greater detail of administrative and technical instructions.

(7) Transmittals identify and explain the original issuance or page change, provide background information, and provide filing instructions for insertion of new pages and removal of changed pages, or both.

(49 U.S.C. 1655)

[39 FR 1512, Jan. 10, 1974]

**§ 1.33 Conflicts of interest.**

No official or employee of a State or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a State or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a State or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department and of such other governmental instrumentality, and such officer, employee or person has not participated in such acquisition for and in behalf of the State. It shall be the responsibility of the State to enforce the requirements of this section.

**§ 1.34 Secondary road plan.**

The approval by the Administrator of a State's certified statement of its secondary road plan, pursuant to 23 U.S.C. 117 will remain in effect for such time as the Administrator in his discretion may determine.

[46 FR 21156, Apr. 9, 1981]

**§ 1.35 Bonus program.**

(a) Any agreement entered into by a State pursuant to the provisions of section 12 of the Federal-Aid Highway Act of 1958, Pub. L. 85-381, 72 Stat. 95, as amended, shall provide for the control or regulation of outdoor advertising, consistent with the advertising policy and standards promulgated by the Administrator, in areas adjacent to the entire mileage of the Interstate

System within that State, except such segments as may be excluded from the application of such policy and standards by section 12.

(b) Any such agreement for the control of advertising may provide for establishing publicly owned informational sites, whether publicly or privately operated, within the limits of or adjacent to the right-of-way of the Interstate System on condition that no such site shall be established or maintained except at locations and in accordance with plans, in furtherance of the advertising policy and standards submitted to and approved by the Administrator.

(c) No advertising right in the acquisition of which Federal funds participated shall be disposed of without the prior approval of the Administrator.

[39 FR 28628, Aug. 9, 1974]

**§ 1.36 Compliance with Federal laws and regulations.**

If the Administrator determines that a State has violated or failed to comply with the Federal laws or the regulations in this part with respect to a project, he may withhold payment to the State of Federal funds on account of such project, withhold approval of further projects in the State and take such other action that he deems appropriate under the circumstances, until compliance or remedial action has been accomplished by the State to the satisfaction of the Administrator.

**§ 1.37 Delegation of authority.**

The Administrator has been delegated authority to perform the functions vested in the Secretary under Federal law.

The Administrator is authorized to redelegate any power or authority conferred upon him to any other official or employee of the Federal Highway Administration as in his judgment will result in efficiency and economy in the effectuation of the purposes of Federal law and the regulations in this part. Any redelegation by the Administrator may include the power to make successive redelegations of authority to the extent deemed desirable by him. Delegations made under regu-

lations heretofore in effect shall continue in full force and effect until modified or revoked.

[35 FR 4162, May 11, 1960, as amended at 35 FR 10719, Dec. 10, 1970; 38 FR 11086, May 4, 1973]

#### § 11.3 Application of regulations.

The regulations in this part shall take effect upon publication in the *FEDERAL REGISTER* and shall supersede all regulations heretofore in effect for carrying out the provisions of Federal law.

## PART 11—ACCOUNTING

Sec.

11.301 Purpose.

11.302 Quarterly reporting by State highway departments.

11.303 Distribution of costs.

11.304 Costs to be excluded.

Authority: 31 U.S.C. 66.

#### 11.301 Purpose.

The purpose of this part is to outline the procedures by which States shall be required to submit reports of unbilled accrued costs on Federal-aid programs. United States Code, title 31 requires, in part, that each Federal agency maintain its accounting records on an accrual basis; therefore, Federal Highway Administration (FHWA) accounts must include the cost of work performed by and for the States that has not been billed to FHWA, in addition to the cost of work performed and previously billed.

[30 FR 26407, July 19, 1974, as amended at 42 FR 59069, Nov. 15, 1977]

#### 11.302 Quarterly reporting by State highway departments.

(a) Each State shall submit a report of unbilled costs as of the quarter ending December 31, March 31, June 30, September 30, signed and dated by an authorized official of the State highway department.

(b) Unbilled costs shall be reported to FHWA on Form FHWA-186 "Accounting Statement—Accrued Unbilled Costs," and the original and one copy submitted to the FHWA Division Office by the close of business on the eighth working day of the following

quarter. The amounts reported on Form FHWA-186 must be supported by the accounting records of the State which shall be available to FHWA officials at all times. These costs shall include:

(1) Right-of-way—amounts (i) paid former owners; (ii) placed in escrow for future payment; and (iii) paid for appraisal fees and other incidental costs of right-of-way.

(2) Construction—amounts paid to contractors, State construction employees, or vendors for work performed and material received.

(3) Railroad and utility—amounts paid to railroad and utility companies.

(4) Preliminary and construction engineering—amounts paid for engineering services or materials.

[42 FR 59069, Nov. 15, 1977]

#### § 11.303 Distribution of costs.

Unbilled accrued costs incurred against the Highway Trust Fund are to be reported for Federal-aid by class of funds. Emergency Relief, and Bridges over Federal dams in columns 6 and 7 of Form FHWA-186.<sup>1</sup> Unbilled Highway Planning and Research Costs (HPS)/(PR) are to be reported on the line provided. Unbilled accrued costs incurred against other appropriations are to be reported separately by appropriation.

[39 FR 26407, July 19, 1974, as amended at 42 FR 59069, Nov. 15, 1977]

#### § 11.304 Costs to be excluded.

The costs of projects authorized in Stage 1, Advance Construction Program (ACP) and Bond Issue projects for which no Federal funds have been reserved shall be excluded from the reports. When Stage 1 projects are advanced to Stage 2, the cost of work paid to date in conformance with Stage 1 authorization will be reported. Likewise, when Bond Issue and ACP projects are converted to regularly financed projects—in whole or in part—the cost of work converted will be reported under the same procedures as those governing regular projects.

<sup>1</sup> Available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

[42 FR 59069, Nov. 15, 1977]

## PART 12—FEDERAL-AID HIGHWAY PROGRAMS: STATE INTERNAL AUDIT RESPONSIBILITIES

### Sec.

- 12.1 Purpose.
- 12.3 Definitions.
- 12.5 Applicability.
- 12.7 Criteria for audit performance and administration.
- 12.9 Annual certification.
- 12.11 Review of audit reports.
- 12.13 FHWA followup and disposition actions on reports, findings, and recommendations.
- 12.15 Audit coordination.
- 12.17 Retention of records.
- 12.19 SHA single audit plans.

**AUTHORITY:** 23 U.S.C. 315; OMB Cir. A-102, Attachment P dated Oct. 22, 1979; 49 CFR 1.48(b).

**SOURCE:** 47 FR 10523, Mar. 11, 1982, unless otherwise noted.

### § 12.1 Purpose.

The purpose of this part is to establish a State highway agency's (SHA) responsibilities for audit of its financial operations (including internal audits), identify audit standards under which the audits will be accomplished, and prescribe Federal Highway Administration (FHWA) audit criteria to implement applicable provisions of the Office of Management and Budget (OMB) Circular A-102, Attachment P, Audit Requirements, dated October 22, 1979, and the Department of Transportation (DOT) Order 4600.9B, Attachment 11, Audit Requirements, dated September 24, 1980.<sup>1</sup>

### § 12.3 Definitions.

(a) *State highway agency (SHA)*—that department, commission, board, or official of any State, the District of Columbia, and the Commonwealth of Puerto Rico charged by its laws with the responsibility for highway construction and that has the delegated authority to administer Federal highway funds which are received under title 23, United States Code.

(b) *Cognizant audit agency*—the Federal agency assigned audit responsibility by OMB for a particular organization receiving Federal assistance or administering federally assisted programs. In those instances where OMB has designated the DOT as the cognizant agency for a recipient, cognizant audit responsibilities will be performed by the DOT Office of Inspector General (OIG).

(c) *Cognizant administrative agency*—the DOT agency assigned cognizant responsibilities for administrative actions relating to audit report and resolution of audit findings for recipients of DOT funds. The cognizant administrative agency for funds administered by the SHA is FHWA.

(d) *Recipient organization*—an SHA receiving Federal highway funds under title 23, United States Code.

(e) *Subrecipient organization*—another State government agency, local government agency, or other public agency (including metropolitan planning organizations) that receive Federal highway funds from an SHA.

(f) *Single audit*—the concept whereby all requirements for the audit of an organization are satisfied by a single organization-wide audit by an SHA internal audit unit or other non-Federal audit unit, in accordance with the part.

(g) *Other non-Federal audits*—independent audits performed by (1) internal audit units of State government agencies other than an SHA, (2) local governments, (3) other public agencies, or (4) qualified public accountants.

(h) *Audit*—a systematic review and appraisal by an SHA's internal audit unit or other non-Federal auditor of the accounting, administrative, and operational controls to determine an report on whether:

(1) Financial operations are conducted properly;

(2) Financial statements are presented fairly;

(3) The SHA or subrecipient organization has complied with laws and regulations affecting the expenditure of Federal funds;

<sup>1</sup>These documents are available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

(4) Internal procedures have been established to meet the objectives of federally assisted programs; and

(5) Financial reports to the Federal Government contain accurate and reliable information.

(i) *Organization-wide audit*—an audit covering all operations of an SHA wherein Federal funds may be involved. This audit may be:

(1) A single audit covering all financial and compliance aspects of the SHA;

(2) A single financial audit of the SHA in which the auditor's opinion and comments incorporate by reference the results of separate compliance audits that may have been performed during the audit period; or

(3) A State-wide audit in which the SHA's financial and compliance requirements are adequately addressed.

#### §12.5 Applicability.

These requirements shall apply to all SHA's administering the State highway program involving Federal-aid funding under title 23, United States Code. The SHA shall ensure that subrecipients of Federal-aid funding adopt the audit reporting requirements, standards for audit performance and administration, records retention, and audit coordination requirements contained in this part.

#### §12.7 Criteria for audit performance and administration.

(a) The correctness and propriety of Federal-aid claims and compliance with governing laws and regulations are inherent in the certifying responsibility of the SHA. Consistent with this responsibility, audits are to be made by the SHA or at its direction on an organization-wide basis and will be conducted in accordance with the General Accounting Office *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*,<sup>1</sup> the *Guidelines for Financial*

*and Compliance Audits of Federally Assisted Programs*,<sup>2</sup> any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

(b) Audits will be scheduled with reasonable frequency, usually annually, but not less frequently than once every two years, considering the nature, size, newness, and complexity of the activity. Audits performed by an SHA internal audit unit or other non-Federal audit unit in accordance with this part will be relied upon by FHWA, and any additional audit work shall build upon work already done.

(c) Governmental auditing standards provide that SHA internal audit units may not be considered independent when performing audits of their own organization. This qualification on independence may be removed or satisfied when other non-Federal auditors have incorporated the work of SHA internal auditors in their reports and have performed independent compliance and financial tests of the work of the SHA internal auditors. For all audits by non-Federal auditors, including those conducted solely by the SHA internal audit unit, the OIG will perform the additional audit tests necessary to attest to the acceptability of the audit reports.

(d) Audits will be of sufficient scope and coverage to meet the minimum reporting requirements defined in § 12.3(h) and will include, at a minimum, an examination of the systems of internal control, systems established to insure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of SHA's and subrecipients. Audits are to be performed on an organization-wide basis, except in those instances where it would be more cost effective to audit programs, activities, or functions indi-

<sup>1</sup>Published in 1981 by the GAO, it is available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Stock Number 020-000-00205-1).

<sup>2</sup>The *Guidelines* were published at 45 FR 21836 (April 2, 1980) and available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Stock Number 020-000-00181-0).



vidually, or when deficiencies indicate the need for such an audit.

(e) Procedures shall be established by each SHA to assure that audit recommendations and findings are resolved in a timely and adequate manner, and that FHWA is promptly advised of corrective actions taken or contemplated.

(f) When contracts are to be awarded for audits as defined in this part, the recipient shall take affirmative action to assure that small and minority businesses are given the maximum practicable opportunity to compete for and participate in the performance of audits.

#### § 12.9 Annual certification.

Recipients shall submit to FHWA an annual statement containing the following or similar certification: "Arrangements have been made for the required financial and compliance audit. The audit will be made within the prescribed audit reporting cycle." Failure to furnish an acceptable audit as determined by the cognizant Federal audit agency may be a basis for denial and/or refunding of Federal funds. The single audit plan should provide the necessary documentation to support the certification. A letter addressed to the FHWA Division Administrator on an annual basis will satisfy this requirement.

(Approved by the Office of Management and Budget under OMB control number 2105-0112.)

#### § 12.11 Review of audit reports.

The SHA internal audit unit shall furnish directly to FHWA and the OIG copies of all audit reports prepared by the internal audit unit or other non-Federal audit unit that include coverage of systems or procedures which may affect the amount of Federal-aid highway funds due the SHA. This includes a system or procedure having an effect on SHA compliance with Federal laws and regulations that relate to Federal-aid highway programs. The OIG is responsible for performing quality assessment reviews to determine that the audits have been conducted in accordance with applicable standards and requirements.

(Approved by the Office of Management and Budget under OMB control number 2105-0112.)

#### § 12.13 FHWA followup and disposition actions on reports, findings, and recommendations.

(a) After receipt of an SHA audit report, or audit report on activities of a subrecipient of Federal-aid highway funds, FHWA shall (1) make an evaluation in order to develop the official position on findings and recommendations affecting Federal-aid funds, (2) make a determination as to action required by FHWA, and (3) advise the SHA of FHWA's official position with regard to the recommendations and findings, the adequacy of action taken or contemplated by the SHA, and any additional actions considered necessary to protect the Federal interest. This total process should normally be completed within 60 days.

(b) Prompt notification shall be made to the SHA when FHWA considers the disposition actions taken by the SHA to have satisfactorily and effectively resolved the recommendations and audit findings affecting Federal-aid funds. A copy of the notification document together with a summary of disposition actions by the SHA and FHWA will be concurrently submitted to the OIG.

(c) Usually within 15 days after receipt of the advice of completion of disposition actions, the OIG shall advise FHWA of its concurrence or comments.

#### § 12.15 Audit coordination.

To improve audit coordination, provide assistance, and reduce duplication of audit coverage, the SHA, FHWA, and OIG are encouraged to coordinate scheduled audits and reviews.

#### § 12.17 Retention of records.

Working papers and reports prepared by the SHA internal audit unit and other non-Federal independent auditors shall be retained for a minimum of three years from the date of the audit report unless the SHA is notified in writing by FHWA or the OIG of the need to extend the retention period. Audit working papers shall be made available upon request to

FHWA, the OIG, and the General Accounting Office.

#### § 12.19 SHA single audit plans.

(a) Any SHA presently operating under an approved single audit plan shall review its plans and procedures for compliance with Attachment P of OMB Circular A-102 and this part, and advise FHWA and the OIG of any revisions considered necessary, including procedures for implementing paragraphs (b) (4) and (5) of this section.

(b) Any SHA which has not received approval of its single audit plan shall forward a plan to FHWA within 90 calendar days of the date of this regulation. The plan shall include:

(1) Organization and functional statements delineating and assigning internal audit responsibility;

(2) Policy directives which conform to the audit standards and requirements referenced herein;

(3) Present staffing levels, planned staffing levels and collateral duties of internal audit personnel;

(4) Procedures for auditing, or arranging for other non-Federal audits, of subrecipients; and

(5) An affirmative action statement which includes procedures to ensure that small business concerns, and business concerns owned and controlled by socially and economically disadvantaged individuals, have the maximum practicable opportunity to participate when contracting for audit services.

(c) An SHA that does not meet the requirements of paragraphs (a) or (b) of this section or that has received partial approval of its audit plan, must submit an implementation plan to FHWA within 90 calendar days of the effective date of this regulation outlining the steps proposed to ensure compliance, including proposed implementation dates. Any statutory restrictions which preclude full compliance are to be identified.

(d) The FHWA Division Administrator will review the SHA's single audit plan and will recommend appropriate action to the Regional Federal Highway Administrator. The Regional Federal Highway Administrator will approve the plan, if acceptable, after appropriate coordination with the OIG.

(The information collection requirements contained in paragraphs (b) and (c) were approved by the Office of Management and Budget under OMB control number 2105-0112.)

## PART 17—RECORDKEEPING AND RETENTION REQUIREMENTS FOR FEDERAL-AID HIGHWAY, RECORDS OF STATE HIGHWAY AGENCIES

Sec.

17.1 Purpose.

17.3 Definitions.

17.5 Requirements.

17.7 Authorization to microfilm records.

17.9 Waiver.

AUTHORITY: 23 U.S.C. 315; 49 CFR 1.45 and 1.48(b); OMB Circular A-102.

SOURCE: 43 FR 41387, Sept. 18, 1978, unless otherwise noted.

### § 17.1 Purpose.

This regulation prescribes the recordkeeping and retention requirements for the Federal-aid highway program.

### § 17.3 Definitions.

As used in this regulation:

(a) *Records*. Includes all accounts, papers, maps, photographs, or other documentary materials regardless of physical form or characteristics, made or received by any agency, firm, or individual in connection with the transaction of Federal-aid highway business. This includes, but is not limited to, financial records, supporting documents, statistical records, and other records pertinent to Federal-aid highway projects.

(b) *Retention period*. The minimum period of time records are required to be held by the Federal Highway Administration (FHWA). Other governmental (Federal as well as State, municipal, etc.) or private entities may require or choose longer periods.

(c) *Federal-aid highway program*. All activity undertaken by a non-Federal governmental agency, business firm, or individual in connection with Federal grants-in-aid related to title 23, United States Code.

### § 17.5 Requirements.

(a) State record systems and requirements for maintaining documentation

concerned with the Federal-aid highway program will meet applicable requirements of Federal and State laws and regulations, establish a sound basis for auditing the State program, and be consistent with generally accepted records management and accounting practices.

(b) Records pertaining to the Federal-aid highway program shall be retained for a minimum period of 3 years with the following exceptions:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

(2) Records for nonexpendable property acquired with Federal funds shall be retained for 3 years after the final disposition of the property.

(3) Records which have been transferred to the Federal Highway Administration for retention.

(4) Toll facility records shall be retained for 3 years subsequent to the date when the facility became operable on a toll-free basis.

(c) The start of retention periods for State and third parties is as follows:

(1) *State records.* (i) For project oriented records, the 3-year retention period starts when the final voucher is submitted.

(ii) For cost accounting and fiscal records which usually relate to more than one project and are not project oriented, the 3-year retention period starts at the end of the State's fiscal year in which an entry is made.

(2) *Third party records.* For third party records, the 3-year retention period starts when the third party receives final payment.

(d) FHWA may, from time to time, request transfer of records from State and local governments when it is determined that these records possess long-term retention value. However, to avoid duplicate recordkeeping, the Division Administrator may make ar-

rangements with State and local governments to retain any records which are continuously needed for joint use.

(e) State or third parties should not limit access to Federal-aid highway records on the basis of this regulation. Federal-aid highway records need not be kept confidential only when FHWA can demonstrate that such records must be kept confidential and would be exempted from disclosure under the Freedom of Information Act (5 U.S.C. 552) if the records were FHWA records.

(f) All records shall be available at all reasonable times for inspection by any authorized representative of the Federal Government and copies thereof shall be furnished when requested.

[43 FR 41387, Sept. 18, 1978, as amended 44 FR 36383, Jun. 22, 1979]

#### § 17.7 Authorization to microfilm records

Microfilmed copies may be used in lieu of original records subject to the following requirements:

(a) Copies must be legible and contain all the significant record details shown on the originals.

(b) Copies shall be so arranged, identified and indexed so that any individual document or component of the records can be located with reasonable facility.

(c) Copies shall be adequate substitutes for the original records and serve the purposes for which such records were created or maintained.

#### § 17.9 Waiver.

The granting of a waiver to the provisions of this regulation is expressly reserved to the Federal Highway Administrator subject to:

(a) Full written justification demonstrating unusual circumstances by the requesting party,

(b) An indication that compliance would be an unreasonable burden upon the State or contractor, and

(c) A determination by FHWA that the waiver is in the public interest.

**SUBCHAPTER B—PAYMENT PROCEDURES****PART 130—ADVANCE OF FUNDS****Subparts A—C—[Reserved]****Subpart D—Advance Right-of-Way Revolving Funds**

Sec.

130.401 Purpose.

130.403 Request for advance.

130.405 Reports and audits.

130.407 Repayment.

130.409 Method of repayment.

**Subparts A—C—[Reserved]****Subpart D—Advance Right-of-Way Revolving Funds**

**AUTHORITY:** 23 U.S.C. 108(c); 23 U.S.C. 315; and 49 CFR 1.48(b).

**SOURCE:** 41 FR 27962, July 8, 1976, unless otherwise noted.

**§ 130.401 Purpose.**

To prescribe procedures and accounting requirements for advances from the right-of-way revolving fund.

**§ 130.403 Request for advance.**

Subsequent to obligations of funds in accordance with 23 CFR Part 712, Subpart G, a State desiring an advance of right-of-way revolving funds shall submit a letter of request to the Division Administrator. This letter shall include the following:

(a) Project numbers.

(b) Amount of advance per project required to:

(1) Meet estimated needs for next 90 days, after deducting property management income for the current period, or

(2) Pay grantors based on net recorded liabilities or net actual disbursements after deduction of any property management income.

(c) A statement that includes the following:

(1) Advance will be disbursed in accordance with provisions of 23 U.S.C. 108(c).

(2) When advance is commingled with other funds, controls that will permit FHWA audit of the advance will be provided.

(3) Interest earned on the advance will be paid promptly to FHWA.

[41 FR 27962, July 8, 1976, as amended at 43 FR 5514, Feb. 9, 1978]

**§ 130.405 Reports and audits.**

(a) Each month any State utilizing the procedures under § 130.403(b) shall submit to the Division Administrator for transmittal to the Regional Office a Statement showing:

(1) The date and amount of advances received, by project.

(2) Total expenditures through the 15th of the month, by project. The statement of advance and expenditures shall be forwarded promptly to insure receipt by the Regional Office by the 20th day of each month.

(b) The Division Administrator shall arrange for such periodic audit of the advance accounts as will determine compliance with the provisions of this regulation.

**§ 130.407 Repayment.**

The State is required to repay the total amount of advance on a project as follows:

(a) Immediately upon termination of the period of time within which actual construction must be commenced (10 years following the end of the fiscal year in which the Secretary approves such advance of funds, unless the Secretary provides for an earlier or later termination date), or

(b) Upon approval by FHWA of the plans, specifications, and estimates for such project for the actual construction on the rights-of-way for which funds were advanced, or

(c) When a project funded from the right-of-way revolving fund is withdrawn or is converted to a regular Federal-aid project.

**§ 130.409 Method of repayment.**

(a) If a project is terminated by expiration of the period of time within which actual construction must be commenced or by withdrawal, the State shall repay the amounts advanced for the project by check drawn to the order of the "Federal Highway

Administration." Any net income remaining from property management activities shall be repaid by separate check.

(b) When a right-of-way project is converted to a regularly funded Federal-air right-of-way project, full repayment will be made by check as in paragraph (a) of this section. Any net income remaining from property management activities may be shown as a previous payment on the first voucher submission on the regularly funded project or repaid by check as in paragraph (a) of this section.

(c) Any cash remaining to the credit of an active right-of-way revolving fund project for which no further expenditures are anticipated shall be remitted to the Federal Highway Administration. Separate checks for amounts advanced and for net income from property management are required as in paragraph (a) of this section.

[41 FR 27962, July 8, 1976, as amended at 43 FR 5514, Feb. 9, 1978]

## PART 140—REIMBURSEMENT

### Subpart A—Reimbursement Vouchers

Sec.

- 140.101 Purpose.
- 140.103 Submission of claims for reimbursement.
- 140.105 Progress vouchers.
- 140.107 Final vouchers.
- 140.109 Reclaims.
- 140.111 Retention of records.

### Subpart B—Construction Engineering Costs

- 140.201 Purpose.
- 140.203 Definitions.
- 140.205 Increase in the per centum of limitation.
- 140.207 Categories of funds subject to application of limitation.

### Subpart C—Temporary Matching Fund Waiver

- 140.301 Purpose.
- 140.303 Applicability.
- 140.305 Definitions.
- 140.307 Submission of certification by Governor.
- 140.309 Request and approval of increase in Federal share.
- 140.311 Limitations on amount for qualifying projects.
- 140.313 Repayment of the increased Federal share.

Sec.

APPENDIX A—MAXIMUM OBLIGATION AMOUNTS FOR MATCHING FUND WAIVER PROJECTS AUTHORIZED PRIOR TO SEPTEMBER 30, 1984

### Subpart D—[Reserved]

### Subpart E—Administrative Settlement Costs—Contract Claims

- 140.501 Purpose.
- 140.503 Definition.
- 140.505 Reimbursable costs.

### Subpart F—Reimbursement for Bond Issue Projects

- 140.601 Purpose.
- 140.602 Requirements and conditions.
- 140.603 Programs.
- 140.604 Reimbursable schedule.
- 140.605 Approval actions.
- 140.606 Project agreements.
- 140.607 Construction.
- 140.608 Reimbursable bond interest cost of Interstate projects.
- 140.609 Progress and final vouchers.
- 140.610 Conversion from bond issue funded project status.
- 140.611 Determination of bond retirement.
- 140.612 Cash management.

### APPENDIX—REIMBURSABLE SCHEDULE CONVERTED "E" (BOND ISSUE) PROJECTS (OTHER THAN INTERSTATE PROJECTS)

### Subpart G—Payroll and Related Expenses—Public Employees; General Administration and Other Overhead; and Cost Accumulation Centers and Distribution Methods

- 140.701 Purpose.
- 140.703 Reimbursable costs.
- 140.705 Salaries and wages.
- 140.707 Travel and transportation.
- 140.709 Employee leave and holidays.
- 140.711 Social security, retirement, and other payroll benefits.
- 140.713 General administration and other overhead.
- 140.715 Use of cost accumulation centers and cost distribution methods.

### Subpart H—State Highway Agency Audit Expense

- 140.801 Purpose.
- 140.803 Policy.
- 140.805 Definitions.
- 140.807 Reimbursable costs.

### Subpart I—Reimbursement for Railroad Work

- 140.900 Purpose.
- 140.902 Applicability.
- 140.904 Reimbursement basis.

Sec.  
 140.906 Labor costs.  
 140.908 Materials and supplies.  
 140.910 Equipment.  
 140.912 Transportation.  
 140.914 Credits for improvements.  
 140.916 Protection.  
 140.918 Maintenance and extended construction.  
 140.920 Lump sum payments.  
 140.922 Billings.

### Subpart A—Reimbursement Vouchers

**AUTHORITY:** 23 U.S.C. 120, 121, 315; 49 CFR 1.48(b).

**SOURCE:** 43 FR 57872, Dec. 11, 1978, unless otherwise noted.

#### § 140.101 Purpose.

The purpose of this regulation is to prescribe billing procedures to be followed by State Highway Agencies (SHA) in claiming reimbursable costs incurred for work performed under the provisions of Title 23, United States Code.

#### § 140.103 Submission of claims for reimbursement.

All claims by a SHA for the Federal share of project costs are to be made, as appropriate, on forms PR-20,<sup>1</sup> "Voucher for Work Performed under Provisions of the Federal-Aid and Federal Highway Acts, as amended," or FHWA-1447,<sup>1</sup> "Voucher for Payment under Certification Acceptance." These vouchers commonly referred to as "progress vouchers" or "final vouchers," are submitted to the Federal Highway Administration (FHWA) Division Administrator for reimbursement.

#### § 140.105 Progress vouchers.

A progress voucher represents a claim for costs incurred in a specific period during the progress of a project. In preparing a progress voucher, all eligible costs shall be included, provided that a recorded liability exists or a cash disbursement has been made.

<sup>1</sup>These forms are available for inspection and copying as prescribed in 49 CFR 7, Appendix D.

#### § 140.107 Final vouchers.

(a) A final voucher represents the final claim, submitted by an SHA to FHWA for a single completed and FHWA-accepted project, in which all project costs incurred and the amount of Federal reimbursements paid are summarized. Each SHA shall promptly submit its final claim for a project following the project completion.

(b) A summary of project costs, classified by work type, shall accompany the final voucher.

(c) Costs for planning and research projects shall be summarized by the individual phases of work.

#### § 140.109 Reclaims.

The State highway agency may appeal any disallowed costs to the Division Administrator within a reasonable time, not to exceed 9 months.

#### § 140.111 Retention of records.

Recordkeeping requirements will be as prescribed in 23 CFR Part 17, "Recordkeeping and Retention Requirements for Federal-Aid Highway Records of State Highway Agencies."

### Subpart B—Construction Engineering Costs

**AUTHORITY:** 23 U.S.C. 121(d), 315; 49 CFR 1.48(b).

**SOURCE:** 43 FR 57873, Dec. 11, 1978, unless otherwise noted.

#### § 140.201 Purpose.

The purpose of this regulation is to prescribe policies and procedures to claim reimbursement for eligible construction engineering costs, and to request and approve an increase in the statutory limitation from 10 per centum to 15 per centum of construction costs.

#### § 140.203 Definitions.

(a) "Construction cost"—the actual net cost of building a project, exclusive of costs of preliminary engineering, construction engineering and rights-of-way.

(b) "Construction engineering costs"—the costs related to construc-

tion engineering as that term is defined in 23 CFR 140.703(b).

(c) "Limitation on reimbursement of construction engineering costs"—either 10 per centum or 15 per centum of construction cost as provided.

**§ 140.205 Increase in the per centum of limitation.**

(a) A State highway agency (SHA) which is limited by law to 10 per centum of construction costs may request authorization to increase the limitation to 15 per centum. The request may be for a specific type, for combinations of types, or for all types of projects set forth in § 140.207 of this regulation.

(b) The request shall be directed to the Federal Highway Administration Division Administrator and shall include cost data to demonstrate that actual eligible costs have exceeded the 10 per centum limitation on either:

(1) A sufficient number of projects on a Statewide basis within the past twelve months; or

(2) A sufficient number of projects located in a specific area or areas (i.e., urban) that are affected by abnormal circumstances peculiar to the SHA, such as geography, topography, urban density, climate, etc.

(c) Approvals granted prior to the issuance of this regulation will remain in effect.

**§ 140.207 Categories of funds subject to application of limitation.**

Projects financed under the following categories of funds have been determined to be subject to the limitation imposed by 23 U.S.C. 121(d):

(a) Bicycle transportation and pedestrian walkways,

(b) Consolidated primary,

(c) Interstate,

(d) Interstate resurfacing,

(e) Landscaping and litter removal,

(f) Landscaping and scenic enhancement,

(g) Metropolitan planning funds,

(h) Primary,

(i) Priority primary,

(j) Rural highway public transportation demonstration program,

(k) Rural primary,

(l) Rural secondary,

(m) Secondary,

(n) Special bridge replacement,

(o) Urban,

(p) Urban extensions,

(q) Urban system, and

(r) Urban high density traffic program.

**Subpart C—Temporary Matching Fund Waiver**

**AUTHORITY:** Sec. 145, Pub. L. 97-424, Stat. 2097; 23 U.S.C. 315; 49 CFR 1.48(b).

**SOURCE:** 48 FR 9001, Mar. 3, 1983, unless otherwise noted.

**§ 140.301 Purpose.**

The purpose of this regulation is to prescribe procedures for administering section 145 of the Surface Transportation Assistance Act of 1982, providing for a temporary waiver of State matching fund requirements.

**§ 140.303 Applicability.**

The provisions of this subpart are applicable to qualifying projects as defined herein during the period January 6, 1983, and ending September 1984.

**§ 140.305 Definitions.**

As used in this subpart:

"*Governor*" means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

"*Qualifying project*" means a project approved under 23 U.S.C. 106(a), or a project for which the United States becomes obligated to pay under 23 U.S.C. 117 for which the Governor has submitted a certification as set forth in this subpart.

"*Increased Federal share*" means the portion of the approved Federal share which is in excess of the regular Federal share that would have been approved if a matching fund waiver had not been requested.

**§ 140.307 Submission of certification by Governor.**

The Governor of the State shall submit a certification, in writing, to the Federal Highway Administration (FHWA) Division Administrator certifying that sufficient funds are not available to pay the cost of the non-

Federal share of a qualifying project, taking into account all State and local funds that are available for obligation on Federal-aid highway projects. Funds encumbered or committed to other existing programs are considered unavailable for matching purposes.

**§ 140.309 Request and approval of increase in Federal share.**

(a) The State Highway agency (SHA) may submit a request in writing to the FHWA Division Administrator for an increase in the Federal share of a qualifying project up to and including 100 per centum at the time the SHA submits a request for an authorization to proceed with work under § 630.114 of this title. The request shall specify the amount of regular Federal funds and the amount of the increased Federal share desired. To maximize the obligation of Federal funds, the amount obligated for the increased Federal share may be based on the estimated costs to be incurred by the State before September 30, 1984, instead of the total estimated project costs. The FHWA letter of authorization to proceed with work shall set forth the approved pro rata share and the amount of Federal funds obligated.

(b) The State should, to the extent possible, limit requests for an increased Federal share to projects funded from the following major categories in order to simplify fiscal control:

- Interstate
- Interstate Discretionary
- Interstate Resurfacing (4R)
- Interstate Substitution (highway projects only)
- Consolidated Primary
- Rural Secondary
- Urban System
- Bridge Replacement and Rehabilitation
- Rail-Highway Crossings
- Barred Elimination

Qualifying projects funded from other categories will be approved with prior concurrence from the FHWA, Office of Fiscal Services.

(c) The SHA in submitting the project agreement, Form PR-2, pursuant to § 630.304 of this title, shall include in it the following provision:

The Federal-aid participation is increased to \_\_\_\_\_ percent for reimbursement claims paid on or before September 30, 1984, in accordance with Pub. L. 97-424, section 145. The additional Federal funds requested total \$\_\_\_\_\_. Claims paid after September 30, 1984, shall be at the regular Federal pro rata share of \_\_\_\_\_ percent.

(d) The State may claim reimbursement for the increased Federal share as a part of its normal billing procedures. Participating costs incurred by the State on qualifying projects shall be charged on a pro rata basis to the regular Federal share, increased Federal share, and non-Federal share, if any.

**§ 140.311 Limitations on amount for qualifying projects.**

(a) The total amount which may be obligated for qualifying projects in any State under this subpart shall not be greater than the excess of (1) the sum of the amount of obligation authority distributed to the State for fiscal year 1983, plus the amount of the minimum allocation available to the State under 23 U.S.C. 157, if any, over (2) the amount of obligation authority distributed to the State for fiscal year 1982 under section 3(b) of the Federal-Aid Highway Act of 1981.

(b) The amounts determined under paragraph (a) of this section have been computed by the FHWA and set forth in Appendix A of this subpart.

(c) The total amount obligated on both the regular Federal share and the increased Federal share shall be charged to this limitation.

**§ 140.313 Repayment of the increased Federal share.**

(a) The State shall repay the amount of the increased Federal share made pursuant to this subpart on or before September 30, 1984. If such repayment is not made by the State, the FHWA shall make the deductions as provided in paragraph (b) of this section. The State shall advise the FHWA Division Administrator by September 1, 1984, regarding its intentions for making repayments or having deductions made to its apportionments.

(b) If the total amount of the increased Federal share is not repaid on or before September 30, 1984, deduc-



tions shall be made from the State's fiscal year 1985 and fiscal year 1986 apportionments which are made under 23 U.S.C. 104(b), excluding the apportionment for Interstate construction under 23 U.S.C. 104(b)(5)(A). The total amount deducted shall be the amount reimbursed to the State on the increased Federal share of all qualifying projects. In each of the fiscal years, one-half of the total deduction shall be made from these apportionments on a pro rata basis.

(c) The total amount deducted in accordance with paragraph (b) of this section shall be reapportioned to those States which did not receive an increased Federal share under this subpart and to those States which have made repayment under this section. These reapportioned funds shall be distributed by the FHWA in accordance with the apportionment formula established for the Federal-aid primary system in 23 U.S.C. 104(b)(1). The reapportioned amount shall supplement the States' primary system apportionments for fiscal years 1985 and 1986.

(d) The apportionments made on October 1, 1984, and October 1, 1985, shall subsequently be adjusted by the FHWA in order to reflect the deductions made under paragraph (b) of this section and the reapportionments made under paragraph (c) of this section.

(e) The FHWA shall deposit all repayments made by a State under paragraph (a) of this section to the Highway Trust Fund and shall credit the repayments to the appropriate apportionment accounts of the State.

**APPENDIX A TO SUBPART C OF PART 140—  
MAXIMUM OBLIGATION AMOUNTS FOR  
MATCHING FUND WAIVER PROJECTS AUTHORIZED PRIOR TO SEPT. 30, 1984**

[Thousands of dollars]

| State             | Amount   |
|-------------------|----------|
| Alabama .....     | \$59,556 |
| Alaska .....      | 34,806   |
| Arizona .....     | 40,388   |
| Arkansas .....    | 37,206   |
| California .....  | 234,552  |
| Colorado .....    | 47,615   |
| Connecticut ..... | 47,356   |

**APPENDIX A TO SUBPART C OF PART 140—  
MAXIMUM OBLIGATION AMOUNTS  
MATCHING FUND WAIVER PROJECTS AUTHORIZED PRIOR TO SEPT. 30, 1984—  
tinued**

[Thousands of dollars]

| State                      | Amount |
|----------------------------|--------|
| Delaware .....             | 1      |
| Florida .....              | 1      |
| Georgia .....              | 1      |
| Hawaii .....               | 1      |
| Idaho .....                | 1      |
| Illinois .....             | 1      |
| Indiana .....              | 1      |
| Iowa .....                 | 1      |
| Kansas .....               | 1      |
| Kentucky .....             | 1      |
| Louisiana .....            | 1      |
| Maine .....                | 1      |
| Maryland .....             | 1      |
| Massachusetts .....        | 1      |
| Michigan .....             | 1      |
| Minnesota .....            | 1      |
| Mississippi .....          | 1      |
| Missouri .....             | 1      |
| Montana .....              | 1      |
| Nebraska .....             | 1      |
| Nevada .....               | 1      |
| New Hampshire .....        | 1      |
| New Jersey .....           | 1      |
| New Mexico .....           | 1      |
| New York .....             | 1      |
| North Carolina .....       | 1      |
| North Dakota .....         | 1      |
| Ohio .....                 | 1      |
| Oklahoma .....             | 1      |
| Oregon .....               | 1      |
| Pennsylvania .....         | 1      |
| Rhode Island .....         | 1      |
| South Carolina .....       | 1      |
| South Dakota .....         | 1      |
| Tennessee .....            | 1      |
| Texas .....                | 1      |
| Utah .....                 | 1      |
| Vermont .....              | 1      |
| Virginia .....             | 1      |
| Washington .....           | 1      |
| West Virginia .....        | 1      |
| Wisconsin .....            | 1      |
| Wyoming .....              | 1      |
| District of Columbia ..... | 1      |
| Puerto Rico .....          | 1      |
| Total .....                | 3,292  |

**Subpart D—[Reserved]**

**Subpart E—Administrative Settlements—  
Costs—Contract Claims**

**AUTHORITY:** 23 U.S.C. 121, 315; 49 CFR 1.148(b); and OMB Circular A-102, Attachment G, Standard 2 (h) and (i).

**SOURCE:** 44 FR 59233, Oct. 15, 1979, unless otherwise noted.

**SOURCE:** 48 FR 54971, Dec. 8, 1983, unless otherwise noted.

**§ 140.501 Purpose.**

This regulation establishes the criteria for eligibility for reimbursement of administrative settlement costs in defense of contract claims on projects performed by a State under Federal-aid procedures.

**§ 140.503 Definition.**

Administrative settlement costs are costs related to the defense and settlement of contract claims including, but not limited to, salaries of a contracting officer or his/her authorized representative, attorneys, and/or members of State boards of arbitration, appeals boards, or similar tribunals, which are allocable to the findings and determinations of contract claims, but not including administrative or overhead costs.

**§ 140.505 Reimbursable costs.**

(a) Federal funds may participate in administrative settlement costs which are:

- (1) Incurred after notice of claim,
  - (2) Properly supported,
  - (3) Directly allocable to a specific Federal-aid or Federal project,
  - (4) For employment of special counsel for review and defense of contract claims, when
    - (i) Recommended by the State Attorney General or State Highway Agency (SHA) legal counsel and
    - (ii) Approved in advance by the FHWA Division Administrator, with advice of FHWA Regional Counsel, and
  - (5) For travel and transportation expenses, if in accord with established policy and practices.
- (b) No reimbursement shall be made if it is determined by FHWA that there was negligence or wrongdoing of any kind by SHA officials with respect to the claim.

**Subpart F—Reimbursement for Bond Issue Projects**

**AUTHORITY:** Sec. 115(c), Pub. L. 95-599, 92 Stat. 2698; sec. 4, Pub. L. 96-106, 93 Stat. 797 (23 U.S.C. 115(b)); 23 U.S.C. 122; 49 CFR 1.48(b).

**§ 140.601 Purpose.**

To prescribe policies and procedures for the use of Federal funds by State highway agencies (SHAs) to aid in the retirement of the principal and interest of bonds, pursuant to 23 U.S.C. 122 and the payment of interest on bonds of eligible Interstate projects.

**§ 140.602 Requirements and conditions.**

(a) An SHA that uses the proceeds of bonds issued by the State, a county, city or other political subdivision of the State, for the construction of projects on the Federal-aid primary or Interstate system, or extensions of any of the Federal-aid highway systems in urban areas, or for substitute highway projects approved under 23 U.S.C. 103(e)(4), may claim payment of any portion of such sums apportioned to it for expenditures on such system to aid in the retirement of the principal of bonds at their maturities, to the extent that the proceeds of bonds have actually been expended in the construction of projects.

(b) Any interest earned and payable on bonds, the proceeds of which were expended on Interstate projects after November 6, 1978, is an eligible cost of construction. The amount of interest eligible for participation will be based on (1) the date the proceeds were expended on the project, (2) amount expended, and (3) the date of conversion to a regularly funded project. As provided for in section 115(c), Pub. L. 95-599, November 6, 1978, interest on bonds issued in any fiscal year by a State after November 6, 1978, may be paid under the authority of 23 U.S.C. 122 only if such SHA was eligible to obligate Interstate Discretionary funds under the provisions of 23 U.S.C. 118(b) during such fiscal year, and the Administrator certifies that such eligible SHA has utilized, or will utilize to the fullest extent possible during such fiscal year, its authority to obligate funds under 23 U.S.C. 118(b).

(c) The Federal share payable at the time of conversion, as provided for in § 140.610 shall be the legal pro rata in effect at the time of execution of the

project agreement for the bond issue project.

(d) The authorization of a bond issue project does not constitute a commitment of Federal funds until the project is converted to a regular Federal-aid project as provided for in § 140.610.

(e) Reimbursements for the redemption of bonds may not precede, by more than 60 days, the scheduled date of the retirement of the bonds.

(f) Federal funds are not eligible for payment into sinking funds created and maintained for the subsequent retirement of bonds.

**§ 140.603 Programs.**

Programs covering projects to be financed from the proceeds of bonds shall be prepared and submitted to FHWA. Project designations shall be the same as for regular Federal-aid projects except that the prefix letter "B" for bond issue shall be used as the first letter of each project designation, e.g., "BI" for Bond Issue Projects—Interstate.

**§ 140.604 Reimbursable schedule.**

Projects to be financed from other than Interstate funds shall be subject to a 36-month reimbursable schedule upon conversion to regular Federal-aid financing (See appendix). FHWA will consider requests for waiver of this provision at the time of conversion action. Waivers are subject to the availability of liquidating cash.

**§ 140.605 Approval actions.**

(a) Authorization to proceed with preliminary engineering and acquisition of rights-of-way shall be issued in the same manner as for regularly financed Federal-aid projects.

(b) Authorization of physical construction shall be given in the same manner as for regularly financed Federal-aid projects. The total cost and Federal funds required, including interest, shall be indicated in the plans, specifications, and estimates.

(c) Projects subject to the reimbursable schedule shall be identified as an "E" project when the SHA is authorized to proceed with all or any phase of the work.

(d) Concurrence in the award of contracts shall be given.

**§ 140.606 Project agreements.**

Project Agreements, Form PR-2 shall be prepared and executed. Agreement provision 8 on the reverse side of Form PR-2<sup>1</sup> shall apply for bond issue projects.

**§ 140.607 Construction.**

Construction shall be supervised by the SHA in the same manner as regularly financed Federal-aid projects. The FHWA will make construction inspections and reports.

**§ 140.608 Reimbursable bond interest costs of Interstate projects.**

(a) Bond interest earned on bonds actually retired may be reimbursed by the Federal pro rata basis applicable to such projects in accordance with § 140.602(b) and (c).

(b) No interest will be reimbursed for bonds issued after November 1, 1978, used to retire or otherwise refund bonds issued prior to that date.

**§ 140.609 Progress and final vouchers.**

(a) Progress vouchers may be submitted for the Federal share of bonds retired or about to be retired, including eligible interest on Interstate Bond Issue Projects, the proceeds of which have actually been expended for the construction of the project.

(b) Upon completion of a bond issue project, a final voucher shall be submitted by the SHA. After final review by the SHA, the SHA will be advised as to the total cost and Federal fund participation for the project.

**§ 140.610 Conversion from bond issue to funded project status.**

(a) At such time as the SHA elects to apply available apportioned Federal-aid funds to the retirement of bonds, including eligible interest earned and payable on Interstate Bond Issue Projects subject to available obligational authority, its claim shall be supported by appropriate certifications as follows: "I hereby certify that the following

<sup>1</sup>The text of FHWA Form PR-2 is found in 23 CFR Part 630, Subpart C, Appendix C.

bonds, (list), the proceeds of which have been actually expended in the construction of bond issue projects authorized by United States Code, Title 23, Section 122, (1) have been retired on —, or (2) mature and are scheduled for retirement on —, which is — days in advance of the maturity date of —." Eligible interest claimed on Interstate Bond Projects shall be shown for each bond and the certification shall include the statement: "I also certify that interest earned and paid or payable for each bond listed has been determined from the date on and after which the respective bond proceeds were actually expended on the project."

(b) The SHA's request for full conversion of a completed project(s), or partial conversion of an active or completed project(s), may be made by letter, inclusive of the appropriate certification as described in § 140.610(a) making reference to any progress payments received or the final voucher(s) previously submitted and approved in accordance with § 140.609.

(c) Approval of the conversion action shall be by the Division Administrator.

(d) The SHA's request for partial conversion of an active or completed bond issue project shall provide for: (1) Conversion to funded project status of the portion to be financed out of the balance of currently available apportioned funds, and (2) retention of the unfunded portion of the project in the bond program.

(e) Where the SHA's request involves the partial conversion of a completed bond issue project, payment of the Federal funds made available under the conversion action shall be accomplished through use of Form PR-20, Voucher for Work Performed under Provisions of the Federal-aid and Federal Highway Acts, prepared in the division office and appropriately cross-referenced to the Bond Issue Project final voucher previously submitted and approved. The final voucher will be reduced by the amount of the approved reimbursement.

#### § 140.611 Determination of bond retirement.

Division Administrators shall be responsible for the prompt review of the

SHA's records to determine that bonds issued to finance the projects and for which reimbursement has been made, including eligible bond interest expense, have been retired pursuant to the State's certification required by § 140.610(a), and that such action is documented in the project file.

#### § 140.612 Cash management.

By July 1 of each year the SHA will provide FHWA with a schedule, including the anticipated claims for reimbursement, of bond projects to be converted during the next two fiscal years. The data will be used by FHWA in determining liquidating cash required to finance such conversions.

#### APPENDIX—REIMBURSABLE SCHEDULE FOR CONVERTED "E" (BOND ISSUE) PROJECTS (OTHER THAN INTERSTATE PROJECTS)

| Time in months following conversion from "E" (bond issue) project to regular project | Cumulative amount reimbursable (percent of Federal funds obligated) |
|--------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| 1.....                                                                               | 1                                                                   |
| 2.....                                                                               | 2                                                                   |
| 3.....                                                                               | 5                                                                   |
| 4.....                                                                               | 9                                                                   |
| 5.....                                                                               | 13                                                                  |
| 6.....                                                                               | 18                                                                  |
| 7.....                                                                               | 23                                                                  |
| 8.....                                                                               | 29                                                                  |
| 9.....                                                                               | 34                                                                  |
| 10.....                                                                              | 39                                                                  |
| 11.....                                                                              | 44                                                                  |
| 12.....                                                                              | 49                                                                  |
| 13.....                                                                              | 54                                                                  |
| 14.....                                                                              | 58                                                                  |
| 15.....                                                                              | 61                                                                  |
| 16.....                                                                              | 64                                                                  |
| 17.....                                                                              | 67                                                                  |
| 18.....                                                                              | 70                                                                  |
| 19.....                                                                              | 73                                                                  |
| 20.....                                                                              | 75                                                                  |
| 21.....                                                                              | 77                                                                  |
| 22.....                                                                              | 79                                                                  |
| 23.....                                                                              | 81                                                                  |
| 24.....                                                                              | 83                                                                  |
| 25.....                                                                              | 85                                                                  |
| 26.....                                                                              | 87                                                                  |
| 27.....                                                                              | 89                                                                  |
| 28.....                                                                              | 91                                                                  |
| 29.....                                                                              | 93                                                                  |
| 30.....                                                                              | 94                                                                  |
| 31.....                                                                              | 95                                                                  |
| 32.....                                                                              | 96                                                                  |
| 34.....                                                                              | 97                                                                  |

| Time in months following conversion from "E"<br>(bond issue) project to regular project | Cumulative<br>amount<br>reimbursable (percent<br>of Federal<br>funds<br>obligated) |
|-----------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
| 35 .....                                                                                | 99                                                                                 |
| 36 .....                                                                                | 100                                                                                |

### Subpart G—Payroll and Related Expense of Public Employees; General Administration and Other Overhead; and Cost Accumulation Centers and Distribution Methods

**AUTHORITY:** 23 U.S.C. 101(e), 114(a), 315; 49 CFR 1.48(b).

**SOURCE:** 46 FR 3501, Jan. 15, 1981, unless otherwise noted.

#### § 140.701 Purpose.

To prescribe policies and procedures for reimbursing a State highway agency (SHA) for the costs of salaries, wages, and related costs incurred by its employees or by those of a county, city, or other local public agency (LPA) for the benefit of a federally participating highway project.

#### § 140.703 Reimbursable costs.

The costs of salaries, wages, and related costs may be reimbursable for the following activities:

(a) *Preliminary engineering.* Location, design, and related work preparatory to the advancement of a project to physical construction.

(b) *Construction engineering.* The supervision and inspection of construction activities; additional staking functions considered necessary for effective control of the construction operations; testing materials incorporated into construction; checking shop drawings; and measurements needed for the preparation of pay estimates.

(c) *Acquisition of rights-of-way.* The preparation of right-of-way plans; making economic studies and other related preliminary work; appraisal for parcel acquisition; review of appraisals; preparation for and trial of condemnation cases; management of properties acquired; furnishing of relocation advisory assistance; and other related labor expenses.

(d) *Highway planning.* The ordering and continuing assembly and analysis of information about highways, such as the history of development at their extent, dimensions and conditions, use, economic and social effects, costs, and future needs.

(e) *Research and development.* The search for more complete knowledge of the characteristics of the highway system and the translation of the results of research into practice.

(f) *Administrative settlement cost contract claims.* Services related to the review and defense of claims against Federal-aid projects, as provided for in Subpart E of Part 140 of this title, Administrative Settlement Cost Contract Claims.

(g) *Miscellaneous functions.* Costs incurred for other activities which are properly attributable to, and for the benefit of, Federal-aid projects but are not assignable to any of the previously defined functions.

#### § 140.705 Salaries and wages.

(a) Subject to appropriate authorization requirements, Federal funds may participate in the cost of salaries, wages, and related payroll expenses incurred for periods of time public employees are actively engaged, either directly or indirectly, in project-related activities.

(b) Salaries, wages, and related payroll expenses of an SHA for maintenance, general administration, supervision and other overhead are not eligible for reimbursement except as provided for in paragraph (b) of § 140.713.

#### § 140.707 Travel and transportation.

(a) Federal funds may participate in the cost of commercial transportation of privately owned automobiles, and per diem or subsistence which is essential to the prosecution of the project and is performed in accordance with prescribed procedures.

(b) Reimbursement may be made for use of privately owned automobiles and per diem or subsistence which is incurred in conformance with established reimbursement policy of the SHA or LPA.

**§140.709 Employee leave and holidays.**

(a) An SHA or LPA may claim reimbursement for the costs of leave, i.e., annual, sick, military, jury, etc., that is earned, accounted for, and used in accordance with established procedures. The cost of such leave must be a liability of the SHA or LPA, must be equitably distributed to all activities, and the pro rata costs distributed to a Federal-aid project must be representative of the amount that is earned and accrued while working on the project.

(b) Compensatory leave granted by an SHA or LPA in lieu of payment of overtime to eligible employees may be claimed for reimbursement if accrued and granted under established policies on a uniform basis. Such leave costs must meet the criteria discussed in paragraph (a) of this section.

(c) Costs for other leave of a similar nature which may be peculiar to a specific SHA or LPA may also be reimbursed provided it meets the criteria set forth in paragraph (a) of this section.

**§140.711 Social security, retirement, and other payroll benefits.**

(a) Federal funds may participate in allocable costs incurred for social security, retirement, group insurance premiums, and similar items applicable to salaries and wages of public employees engaged in work in Federal-aid projects.

(b) The costs for such benefits must be a liability of the SHA or LPA and must meet the criteria set forth in paragraph (a) of § 140.709.

**§140.713 General administration and other overhead.**

(a) General administration, supervision, and other unallowable overhead costs of an SHA are those considered necessary for the management, supervision, and administrative control of a suitably equipped, staffed and operational SHA. Examples of such unallowable costs may include, but are not limited to, the following types of personnel, related payroll benefit costs, and other administrative or support services;

(1) Directors, department heads, legal, accounting, budgeting, personnel, and procurement units.

(2) Related clerical, secretarial, and other support services for officials and personnel listed in paragraph (a)(1) of this section.

(3) Management, supervision, and administrative overhead costs incurred by other units or departments of State, county, or city governmental organizations.

(b) Costs incurred for services rendered by employees generally classified as administrative may, however, be considered eligible for reimbursement for:

(1) A highway planning unit and a research and development unit, in the ratio of time spent on the participating portion of work in the unit to the total unit's working hours, and

(2) Other operating units if such employees are assigned for specific identifiable periods of time to perform project-related activities in the same manner as other operating personnel.

[46 FR 3501, Jan. 15, 1981, as amended at 49 FR 45578, Nov. 19, 1984]

**§ 140.715 Use of cost accumulation centers and cost distribution methods.**

(a) Cost accumulation centers, i.e., cost centers, cost pools, or other acceptable cost accumulation methods, may be used to capture related types of costs for later distribution to all projects or other benefitting activities for which work was performed during the accounting period. The accounting and cost distribution procedures must be in accordance with paragraph (b) of this section for types of costs incurred under the following general criteria:

(1) Salaries, wages and related payroll benefit costs may be incurred during a payroll accounting period which affects a number of projects and, therefore, may not be easily adaptable to charging directly to individual projects due to such factors as (i) incompatibility of time increments for individual projects, (ii) an inordinate amount of time or additional number of documents to provide separate project coding, or (iii) a documented reduction of overhead costs in the elimination of processing source and coding required, increased electronic data processing applications,

and additional accounting requirements.

(2) Small items of costs may be incurred which affect several projects and would result in a disproportionate amount of time and number of documents for separate project accounting in relation to the amount of costs involved.

(3) Items of costs may otherwise be eligible for reimbursement but, due to their nature and the small amounts involved, they are not being claimed for reimbursement, since the additional overhead costs required for separate project coding and effective internal controls are not cost beneficial in relation to separate project reimbursable amounts.

(4) The items of costs must be directly attributable to and properly allocable to the projects to which they are distributed. They must not lose their identity, i.e., type, amount, purpose for which incurred, whether federally participating, input source, etc.

(b) The use of separate cost accumulation centers for comparably related types of costs is a prerequisite to the use of percentages, or other acceptable distribution methods, for cost distribution to benefitting projects or other activities. The accounting procedures and methods of distribution used must have prior concurrence of the Federal Highway Administration, be representative of average actual costs, and must assure that (1) costs are uniformly and equitably distributed to all projects and activities for which work was performed during the accounting period irrespective of source of funds, (2) provisions are established for an adequate segregation of costs and separate distribution methods for similarly related types of costs, (3) actual costs and liabilities are fully accounted for and controlled, and (4) that reviews are made periodically, and the rates or other distribution methods are adjusted at least once annually by any over or under-distributed accumulated costs from the cost accumulation center for the preceding accounting period.

(c) Percentages representative of average actual costs may be used to distribute leave, social security, and other payroll benefits. Such rates are based on prior cost experience adjusted by

anticipated known factors which will affect overall costs during the current year, i.e., scheduled salary increase changes anticipated in insurance premiums, etc.

## Subpart H—State Highway Agency Audit Expense

**AUTHORITY:** 23 U.S.C. 121 and 315; 49 CFR 1.48(b).

**SOURCE:** 49 FR 45578, Nov. 19, 1984, unless otherwise noted.

### § 140.801 Purpose.

To establish the reimbursement criteria for Federal participation project related audit expenses.

### § 140.803 Policy.

Project related audits performed in accordance with generally accepted auditing standards (as modified by the Comptroller General of the United States) and applicable Federal law and regulations are eligible for Federal participation. The State highway agency (SHA) may use other State, local public agency, and Federal audit organizations as well as licensed or certified public accounting firms to augment its audit force.

### § 140.805 Definitions.

(a) *Project related audits.* Audits which directly benefit Federal-aid highway projects. Audits performed in accordance with the requirements of 23 CFR Part 12, audits of third party contract costs, and other audits providing assurance that a recipient has complied with FHWA regulations are all considered project related audits. Audits benefiting only nonfederal projects, those performed for SHA management use only, or those serving similar nonfederal purposes are not considered project related.

(b) *Third party contract costs.* Project related costs incurred by railroads, utilities, consultants, governmental instrumentalities, universities, nonprofit organizations, construction contractors (force account work), and organizations engaged in right-of-way studies, planning, research, or related activities where the terms of a proposal or contract (including lump sum)

necessitate an audit. Construction contracts (except force account work) are not included in this group.

#### § 140.897 Reimbursable costs.

(a) Federal funds may be used to reimburse an SHA for the following types of project related audit costs:

(1) Salaries, wages, and related costs paid to public employees in accordance with Subpart G of this part,

(2) Payments by the SHA to any Federal, State, or local public agency audit organization, and

(3) Payments by the SHA to licensed or certified public accounting firms.

(b) Audit costs incurred by an SHA shall be equitably distributed to all benefiting parties. The portion of these costs allocated to the Federal-Aid Highway Program which are not directly related to a specific project or projects shall be equitably distributed, as a minimum, to the major FHWA funding categories in that State.

### Subpart I—Reimbursement for Railroad Work

**AUTHORITY:** 23 U.S.C. 315; 49 CFR 1.48, unless otherwise noted.

**SOURCE:** 40 FR 16057, Apr. 9, 1975, unless otherwise noted.

#### § 140.900 Purpose.

The purpose of this subpart is to prescribe policies and procedures on reimbursement to the States for railroad work done on projects undertaken pursuant to the provisions of 23 CFR, Part 646, Subpart B.

#### § 140.902 Applicability.

This subpart, and all references hereinafter made to "projects," applies to Federal-aid projects involving railroad facilities, including projects for the elimination of hazards of railroad-highway crossings, and other projects which use railroad properties or which involve adjustments required by highway construction to either railroad facilities or facilities that are jointly owned or used by railroad and utility companies.

#### § 140.904 Reimbursement basis.

(a) **General.** On projects involving the elimination of hazards of railroad-

highway crossings, and on other projects where a railroad company is not obligated to move or to change its facilities at its own expense, reimbursement will be made for the costs incurred in making changes to railroad facilities, required in connection with a Federal-aid highway project, as hereinafter provided.

(b) **Eligibility.** To be eligible, the costs must be:

(1) For work which is included in an approved program,

(2) Incurred subsequent to the date of authorization by the Federal Highway Administration (FHWA),

(3) Incurred in accordance with the provisions of 23 CFR, Part 646, Subpart B, and

(4) Properly attributable to the project.

#### § 140.906 Labor costs.

(a) **General.** (1) Salaries and wages, at actual or average rates, and related expenses paid by a company to individuals, for the time they are working on the project, are reimbursable when supported by adequate records. This shall include labor costs associated with preliminary engineering, construction engineering, right-of-way, and force account construction.

(2) Salaries and expenses paid to individuals who are normally part of the overhead organization of the company may be reimbursed for the time they are working directly on the project, such as for accounting and bill preparation, when supported by adequate records and when the work performed by such individuals is essential to the project and could not have been accomplished as economically by employees outside the overhead organization.

(3) Amounts paid to engineers, architects and others for services directly related to projects may be reimbursed.

(b) **Labor surcharges.** (1) Labor surcharges include worker compensation insurance, public liability and property damage insurance, and such fringe benefits as the company has established for the benefit of its employees. The cost of labor surcharges will be reimbursed at actual cost to the company or a company may, at its option,



use an additive rate or other similar technique in lieu of actual costs provided that (i) the rate is based on historical cost data of the company, (ii) such rate is representative of actual costs incurred, (iii) the rate is adjusted at least annually taking into consideration known anticipated changes and correcting for any over or under applied costs for the preceding period, and (iv) the rate is approved by the SHA and FHWA.

(2) Where the company is a self-insurer there may be reimbursement at experience rates properly developed from actual costs, not to exceed the rates of a regular insurance company for the class of employment covered.

(23 U.S.C. 109(e), 120(d), 130, 315, and 405; sec. 203, Pub. L. 93-87, 87 Stat. 283; 49 CFR 1.48(b))

[40 FR 16057, Apr. 9, 1975, as amended at 47 FR 33955, Aug. 5, 1982]

**§ 140.908 Materials and supplies.**

(a) *Procurement.* Materials and supplies, if available, are to be furnished from company stock, except they may be obtained from other sources near the project site when available at less cost. Where not available from company stock, they may be purchased either under competitive bids or existing continuing contracts, under which the lowest available prices are developed. Minor quantities and proprietary products are excluded from these requirements. The company shall not be required to change its existing standards for materials used in permanent changes to its facilities.

(b) *Costs.* (1) Materials and supplies furnished from company stock shall be billed at current stock price of such new or used material at time of issue.

(2) Materials and supplies not furnished from company stock shall be billed at actual costs to the company delivered to the point of entry on the railroad company's line nearest the source of procurement.

(3) A reasonable cost of plant inspection and testing may be included in the costs of materials and supplies where such expense has been incurred. The computation of actual costs of materials and supplies shall include the deduction of all offered discounts, rebates and allowances.

(c) *Materials recovered.* (1) Materials recovered from temporary use and accepted for reuse by the company shall be credited to the project at price charged to the job, less a consideration for loss in service life at 10 percent rails, angle bars, tie plates and me turnout materials and 15 percent all other materials. Materials recovered from the permanent facility the company that are accepted by the company for return to stock shall be credited to the project at current stock prices of such used material.

(2) Materials recovered and not accepted for reuse by the company, if determined to have a net sale value shall be sold by the State or railroad following an opportunity for State inspection and appropriate solicitation for bids, to the highest bidder; or the company practices a system of periodic disposal by sale, credit to the project shall be at the going price supported by the records of the company. Where applicable, credit for materials recovered from the permanent facility in length or quantities in excess of that being placed should be reduced to reflect any increased cost of railroad operation resulting from the adjustment.

(d) *Removal costs.* Federal participation in the costs of removing, salvaging, transporting, and handling recovered materials will be limited to the value of materials recovered, except where FHWA approves additional measures for restoration of affected areas as required by the physical construction or by reason of safety or aesthetics.

(e) *Handling costs.* The actual direct costs of handling and loading out of materials and supplies at a from company stores or material yards and of unloading and handling of recovered materials accepted by the company at its stores or material yards, are reimbursable. At the option of the company, 5 percent of the amounts billed for the materials and supplies which are issued from company stores and material yards will be reimbursable in lieu of actual costs.

(f) *Credit losses.* On projects where the company actually suffers loss by application of credits, the company shall have the opportunity of submitting

detailed statement of such loss as a basis for further adjustment.

**§ 140.910 Equipment.**

(a) *Company owned equipment.* Cost of company-owned equipment may be reimbursed for the average or actual cost of operation, light and running repairs, and depreciation, or at industry rates representative of actual costs as agreed to by the railroad, SHA, and FHWA. Reimbursement for company-owned vehicles may be made at average or actual costs or at rates of recorded use per mile which are representative of actual costs and agreed to by the company, SHA, and FHWA.

(b) *Other equipment.* Where company owned equipment is not available, reimbursement will be limited to the amount of rental paid (1) to the lowest qualified bidder, (2) under existing continuing contracts at reasonable cost, or (3) as an exception, by negotiation where (b) (1) and (2) are impractical due to project location or schedule.

(23 U.S.C. 109(e), 120(d), 130, 315, and 405; sec. 203, Pub. L. 93-87, 87 Stat. 283; 49 CFR 1.48(b))

[40 FR 16057, Apr. 9, 1975, as amended at 47 FR 33955, Aug. 5, 1982]

**§ 140.912 Transportation.**

(a) *Employees.* The company's cost of necessary employee transportation and subsistence directly attributable to the project, which is consistent with overall policy of the company, is reimbursable.

(b) *Materials, supplies, and equipment.* The most economical movement of materials, supplies and equipment to the project and necessary return to storage, including the associated costs of loading and unloading equipment, is reimbursable. Transportation by a railroad company over its own lines in a revenue train is reimbursable at average or actual costs, at rates which are representative of actual costs, or at rates which the company charges its customers for similar shipments provided the rate structure is documented and available to the public. These rates are to be agreed to by the company, SHA, and FHWA. No charge will be made for transportation by work train other than the operating expenses of the work train. When it is

more practicable or more economical to move equipment on its own wheels, reimbursement may be made at average or actual costs or at rates which are representative of actual costs and are agreed to by the railroad, SHA, and FHWA.

(23 U.S.C. 109(e), 120(d), 130, 315, and 405; sec. 203, Pub. L. 93-87, 87 Stat. 283; 49 CFR 1.48(b))

[40 FR 16057, Apr. 9, 1975, as amended at 47 FR 33955, Aug. 5, 1982]

**§ 140.914 Credits for improvements.**

(a) Credit shall be made to the project for additions or improvements which provide for higher quality or increased service capability of the operating facility and which are provided solely for the benefit of the company.

(b) Where buildings and other depreciable structures of a company which are integral to operation of rail traffic must be replaced, credit shall be made to the project as set forth in 23 CFR 646.216(c)(2).

(c) No credit is required for additions or improvements which are:

(1) Necessitated by the requirements of the highway project.

(2) Replacements which, although not identical, are of equivalent standard.

(3) Replacements of devices or materials no longer regularly manufactured and the next highest grade or size is used.

(4) Required by governmental and appropriate regulatory commission requirements.

**§ 140.916 Protection.**

The cost of essential protective services which, in the opinion of a railroad company, are required to ensure safety to railroad operations during certain periods of the construction of a project, is reimbursable provided an item for such services is incorporated in the State-railroad agreement or in a work order issued by the State and approved by FHWA.

**§ 140.918 Maintenance and extended construction.**

The cost of maintenance and extended construction is reimbursable to the extent provided for in 23 CFR

## § 140.920

646.216(f)(4), and where included in the State-Railroad Agreement or otherwise approved by the State and FHWA.

### § 140.920 Lump sum payments.

Where approved by FHWA, pursuant to 23 CFR 646.216(d)(3), reimbursement may be made as a lump sum payment, in lieu of actual costs.

### § 140.922 Billings.

(a) After the executed State-Railroad Agreement has been approved by FHWA, the company may be reimbursed on progress billings of incurred costs. Costs for materials stockpiled at the project site or specifically purchased and delivered to the company for use on the project may be reimbursed on progress billings following approval of the executed State-Railroad Agreement or the written agreement under 23 CFR 646.218(c).

(b) The company shall provide one final and complete billing of all incurred costs, or of the agreed-to lump sum, at the earliest practicable date. The final billing to FHWA shall include a State certification that the work is complete, acceptable and in accordance with the terms of the agreement.

(c) All company cost records and accounts relating to the project are subject to audit by representatives of the State and/or the Federal Government for a period of three years from the date final payment has been received by the company.

(d) A railroad company must advise the State promptly of any outstanding obligation of the State's contractor for services furnished by the company such as protective services.

[40 FR 16057, Apr. 9, 1975, as amended at 40 FR 29712, July 15, 1975]

## PART 160—STATE FISCAL PROCEDURES AND REPORTS

### Subpart A—Transfer of Federal-Aid Highway Funds—Fiscal Year 1976 and Prior Year Apportionments

Sec.

160.101 Purpose.

160.103 Requirements and conditions.

## 23 CFR Ch. I (4-1-85 Edition)

Sec.

### Subpart B—Transfer of Federal-Aid Highway Funds—Fiscal Year 1977 and Subsequent Year Apportionments

160.201 Purpose.

160.203 Requirements and conditions.

### Subpart C—Transfer of Highway Safety Funds

160.301 Purpose.

160.303 General.

160.305 Transfers among Trust Fund Apportionments.

160.307 Transfers between General Fund Apportionments.

### Subpart A—Transfer of Federal-Aid Highway Funds—Fiscal Year 1976 and Prior Year Apportionments

AUTHORITY: 23 U.S.C. 104 (c) and (d), 49 CFR 1.48(b).

#### § 160.101 Purpose.

The purpose of this subpart is to prescribe the procedures for transfer of fiscal year 1976 and prior fiscal year funds under subsections 104 (c) and (d) of Title 23, United States Code, as amended by section 111 of the Federal-Aid Highway Act of 1973 and section 113(b) of the Federal-Aid Highway Act of 1976.

[41 FR 54169, Dec. 13, 1976]

#### § 160.103 Requirements and conditions.

(a) Total transfers between apportionments may not increase or decrease the original apportionment more than 40 per centum.

(b) Funds transferred to any apportionment are to be expended under the provisions of law governing the expenditure of the apportionment which the transfer is made.

(c) Funds obligated are not eligible for transfer.

(d) Transfers are to be approved by the Governor of the State as being in the public interest and submitted to the State highway department to the Division Administrator. Requests for transfer of funds apportioned in accordance with 23 U.S.C. 104(b)(6) allocated to any urbanized area with a population of more than 200,000 population or more under 200,000 population shall also be approved by the local officials of such urbanized area. "Local officials of such urbanized area."

area" means the principal elected officials of general purpose local governments acting through the metropolitan planning organization (MPO) designated by the Governor in accordance with 23 CFR Part 450, Subpart A.

[41 FR 54169, Dec. 13, 1976, as amended at 42 FR 41279, Aug. 16, 1977; 46 FR 21156, Apr. 9, 1981]

### **Subpart B—Transfer of Federal-Aid Highway Funds—Fiscal Year 1977 and Subsequent Year Apportionments**

**AUTHORITY:** 23 U.S.C. 104 (c) and (d), 315; 49 CFR 1.48(b).

#### **§ 160.201 Purpose.**

The purpose of this subpart is to prescribe the procedures for transfer of fiscal year 1977 and subsequent fiscal year funds under subsections 104 (c) and (d) of Title 23, United States Code, as amended by subsections 113(a) and (b) of the Federal-Aid Highway Act of 1976.

[41 FR 54169, Dec. 13, 1976]

#### **§ 160.203 Requirements and conditions.**

(a) Total transfers between apportionments made under 23 U.S.C. 104(b) (1) and (2) for any fiscal year shall not increase or decrease the original apportionment by more than 40 per centum.

(b) Total transfers between apportionments made under 23 U.S.C. 104(b) (1) and (6) for any fiscal year shall not increase or decrease the original apportionment by more than 20 per centum.

(c) No transfer shall be made decreasing and apportionment in any fiscal year if a transfer has already been made to increase it. Likewise, no transfer shall be made to increase an apportionment in any fiscal year if a transfer has already been made to decrease it.

(d) Funds transferred to any apportionment are to be expended under the provisions of law governing the expenditure of the apportionment to which the transfer is made.

(e) Funds obligated are not eligible for transfer.

(f) Transfers are to be approved by the Governor of the State as being in the public interest and submitted by the State highway department to the Division Administrator. Requests for transfer of funds apportioned in accordance with 23 U.S.C. 104(b)(6) and allocated to any urbanized area of 200,000 population or more under 23 U.S.C. 150 shall also be approved by the local officials of such urbanized area. "Local officials of such urbanized area" means the principal elected officials of general purpose local governments acting through the metropolitan planning organization (MPO) designated by the Governor in accordance with 23 CFR 450, Subpart A and Federal-Aid Highway Program Manual, Volume 4, Chapter 4, Section 2.

[41 FR 54169, Dec. 13, 1976, as amended at 42 FR 41279, Aug. 16, 1977]

### **Subpart C—Transfer of Highway Safety Funds**

**AUTHORITY:** 23 U.S.C. 104(g) and 315; 49 CFR 1.48(b).

**SOURCE:** 42 FR 59263, Nov. 16, 1977, unless otherwise noted.

#### **§ 160.301 Purpose.**

To prescribe the procedures for transfer of funds among highway safety programs under 23 U.S.C. 104(g), as amended by section 206 of the Highway Safety Act of 1976.

#### **§ 160.303 General.**

(a) For the purpose of 23 U.S.C. 104 (g), the terms "apportioned" and "apportionment" include the terms "allocate" and "allocation".

(b) Funds apportioned from General Funds may not be transferred to funds apportioned from the Highway Trust Fund. Funds apportioned from the Highway Trust Fund may not be transferred to funds apportioned from the General Fund.

(c) The transfer provisions involve the following funds:

(1) Apportionments financed from the Highway Trust Fund:

- (i) Special Bridge Replacement,
- (ii) High Hazard Location,
- (iii) Elimination of Roadside Obstacles,

## § 160.305

(iv) High Hazard Locations/Elimination of Roadside Obstacles, and

(v) Rail-Highway Crossings, On-System.

(2) Apportionment financed from the General Fund:

(i) Rail-Highway Crossings, Off-System, and

(ii) Safer Off-System Roads.

(d) Funds transferred to any apportionment are to be expended under the provisions of law governing expenditure of the apportionment to which the transfer is made.

(e) Funds under obligation are not eligible for transfer.

(f) Transfers may be approved only between funds apportioned for the same fiscal year.

## § 160.305 Transfers among Trust Fund Apportionments.

(a) Not more than 40 per centum of the funds apportioned in any fiscal year to each State may be transferred from one apportionment (§ 160.303(c)(1)) to any other apportionment if the transfer is requested by the State highway department and is approved by the Federal Highway Administration (FHWA) as being in the public interest.

(1) Not to exceed 50 percent of the amount transferred under § 160.305(a) of this part from the rail-highway crossing apportionment may be transferred from the half of the apportionment reserved for installation of protective devices.

(2) Transfers to the rail-highway crossing apportionment may be used for either protective devices or the elimination of other hazards.

(b) One-hundred percent of the funds apportioned in any fiscal year to each State may be transferred from one apportionment (§ 160.303(c)(1)) to any other apportionment if the transfer is requested by the State highway department, and is approved by FHWA as being in the public interest, if FHWA has received assurances from such State highway department that the purposes of the program from which such funds are to be transferred have been met.

## 23 CFR Ch. I (4-1-85 Edition)

## § 160.307 Transfers between General Fund Apportionments.

(a) All or any part of the funds authorized for the rail-highway crossing program off-season (Section 203(c) of the Highway Safety Act of 1973, as amended) may be transferred to a safer off-system roads apportionment (23 U.S.C. 219) if the State highway department requests the transfer and provides satisfactory assurances that the purposes of Section 203 have been met.

(b) A transfer between General Fund apportionments does not effect a transfer of obligation authority or liquidating cash. Obligation authority and liquidating cash for the transferred funds must be provided by appropriation action before they can be obligated.

## PART 172—ADMINISTRATION OF NEGOTIATED CONTRACTS

### Sec.

172.1 Purpose.

172.3 Application.

172.5 Definitions.

172.7 Procurement standards.

172.9 Contract provisions.

172.11 Approvals.

**AUTHORITY:** 23 U.S.C. 104(f), 114, 307(c), 315 and 402; 49 CFR 1.48(b); Office of Management and Budget (OMB) Circular No. A-102.

**SOURCE:** 44 FR 75553, Dec. 20, 1979, unless otherwise noted.

### § 172.1 Purpose.

To set forth policies and standards for negotiated contracts to ensure that a qualified contractor is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner at a just and reasonable cost.

### § 172.3 Application.

(a) These policies and standards are to be followed by State and local government agencies in the procurement of services, supplies, or equipment through negotiated contracts with funds made available under Title 23, United States Code.

(b) This regulation applies to the following activities:

(1) Planning, research, and development;

(2) Preliminary engineering;

(3) Construction engineering; and

(4) Highway related safety program.

(c) Procedural requirements for other negotiated contracts are contained in applicable regulations and directives for the respective program areas. Procurements not covered by this regulation include:

(1) Construction contracts;

(2) Utility or railroad company administered contracts for utility relocations or railroad-highway projects;

(3) Supportive services and on-the-job-training contracts;

(4) Contracts for right-of-way activities; and

(5) Contracts under the rural highway public transportation program.

#### § 172.5 Definitions.

The terms used in this regulation are defined in 23 U.S.C. 101(a); 23 CFR 450, Subpart A; 41 CFR Subtitle A, Chapter 1; OMB Circular No. A-102; as supplemented below.

(a) *Contracting agency.* The State highway agency (SHA), Governor's highway safety representative (GHSR), or local government which has responsibility for the procurement.

(b) *Local government.* For purposes of this regulation, local governments also include Metropolitan Planning Organizations (MPOs) as defined in 23 CFR 450.104.

(c) *Planning, research, and development.* Activities undertaken utilizing funds made available under 23 U.S.C. 104(f) or 307(c).

(d) *Preliminary engineering.* All project oriented work leading to an involved in the production of construction plans, specifications, and estimates including environmental assessments, public liaison, surveys, design, and related work.

(e) *Construction engineering.* Surveys and stakeouts, inspections, testing materials, checking shop drawings, revising plans, reporting construction operations, preparing periodic estimates, and related work.

(f) *Highway related safety program.* All activities undertaken utilizing funds made available under 23 U.S.C.

402 which are administered by the Federal Highway Administration (FHWA).

(g) *Audit evaluation.* Examination of contractor records made in accordance with generally accepted auditing standards, including "Standards of Governmental Organizations, Programs, Activities, and Functions" published by the General Accounting Office.

#### § 172.7 Procurement standards.

(a) The contracting agency shall comply with the standards of Attachment O, OMB Circular No. A-102, and this regulation in establishing procedures for the procurement of services, supplies, or equipment with Federal funds.

(b) The SHA's and GHSR's procedures shall ensure that procurement actions by or through other State agencies or local governments comply with Attachment O, OMB Circular No. A-102, and this regulation.

(c) Before a contract is awarded, the contracting agency shall determine and document in its files that the proposal has been subjected to technical and cost or price evaluations, as appropriate, and how the results of these evaluations were considered in the contract negotiations. Appropriate cost or price evaluations shall include:

(1) An audit evaluation prior to negotiation of proposals for which the total costs exceed, or are expected to exceed, \$50,000.

(2) Audit evaluations of proposals of less than \$50,000 where a valid need exists, such as:

(i) Inadequate knowledge concerning the prospective contractor's accounting policies, cost systems, or substantially changed methods or levels of operation;

(ii) Previous unfavorable experience indicating doubtful reliability of the prospective contractor's estimating, accounting, or purchasing methods, or

(iii) Procurement of a new product for which cost experience is lacking.

(d) Contracting agencies may establish cost principles for determining the reasonableness and allowability of costs. Reimbursement will be limited to the Federal share of costs which are

allowable under Federal cost principles, contained in 41 CFR Part 1-15 (Federal Procurement Regulations). Specifically, these are:

(1) For contracts between the State or local governments and commercial organizations, Subpart 1-15.2, as modified by Subpart 1-15.102;

(2) For contracts between the State or local governments and educational institutions, Subpart 1-15.3; and

(3) For contracts between the State and local governments, or between local governments, Subpart 1-15.7 (Subpart 1-15.7 is the same as Federal Management Circular 74-4).

(e) Applicable cost principles shall be reference in each contractual document.

(f) Contract administration procedures shall provide for:

(1) Determining contractor conformance with the terms, conditions, and specifications of the contract and the propriety of claims prior to final settlement of all contracts;

(2) Determining the reasonableness, allowability, and allocability of costs in accordance with the provisions of 41 CFR Part 1-15;

(3) The maintenance of accounting records that are supported by source documentation, and that will facilitate comparison of actual to proposed costs;

(4) The control, utilization and disposition of property or equipment acquired using Federal funds. The procedures shall comply with the property management standards set forth in Attachment N, OMB Circular No. A-102.

#### § 172.9 Contract provisions.

The contracting agency shall ensure that all contracts include, to the extent appropriate, provisions required by Attachment O, OMB Circular No. A-102, and the following:

(a) *Civil rights.* All contracts awarded by grantees, subgrantees, and their contractors shall contain provisions requiring compliance with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, 49 CFR 21 through Appendix H and 23 CFR 710.405(b) shall be made applicable by reference in all contracts and subcontracts financed in whole or in part with Federal-aid highway funds.

(b) *Documentation.* Contractors where appropriate, shall provide that the contractor document the results of the work to the satisfaction of the contracting agency and the FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the contract objectives.

(c) *Patent rights.* Applicable patent provisions described in 41 CFR 1-9.1 regarding rights to inventions shall be included in contracts as appropriate.

(d) *Copyrights.* The contracting agency may permit copyrighting of reports or other contract products. If copyrights are permitted, the contractor shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

(e) *Subcontracts.* (1) All contractors shall show that the prime contractor is required to perform all work except specialized services or other tasks specifically exempted in the contract, except that governmental recipients of 23 U.S.C. 104(f) or 402 funds may subcontract as necessary to accomplish approved work program activities.

(2) All contracts shall provide that subcontracts exceeding \$10,000 in cost shall contain all required provisions of the prime contract.

(f) *Other provisions.* Following is a list of other provisions normally included in contracts:

(1) Scope of work;

(2) Time period covered;

(3) Contract price, including limiting amounts for all contracts;

(4) Changes in work;

(5) Disputes;

(6) Obligations of contracting agency;

(7) Ownership of documents;

(8) Inspection of work; and

(9) Equipment and instrumentation required.

#### § 172.11 Approvals.

(a) The FHWA will evaluate the SHA's and the GHSR's procurement procedures, as necessary, to ascertain

compliance with Attachment O, OMB Circular No. A-102, and this regulation.

(b) The SHA's and GHSR's are encouraged to perform reviews of subgrantees procurement systems to minimize the need to review individual contracts.

(c) In the absence of acceptable procurement procedures, individual contracts exceeding \$10,000 in cost, along with information showing compliance with Attachment O, OMB Circular No. A-102, and this regulation, shall be submitted for approval by the FHWA prior to execution.

(d) For every contract, the proposed work must receive prior FHWA approval and authorization as a project or as part of a program. Significant changes in the scope of work of a contract shall also be submitted for FHWA review and approval prior to proceeding with the new work. Significant changes are those which require execution of supplemental agreements.

## **PART 190—INCENTIVE PAYMENTS FOR CONTROLLING OUTDOOR ADVERTISING ON THE INTERSTATE SYSTEM**

Sec.

190.1 Purpose.

190.3 Agreement to control advertising.

190.5 Bonus project claims.

190.7 Processing of claims.

**AUTHORITY:** 23 U.S.C. 131(j) and 315; 49 CFR 1.48(b).

**SOURCE:** 43 FR 42742, Sept. 21, 1978, unless otherwise noted.

### **§ 190.1 Purpose.**

The purpose of this regulation is to prescribe project procedures for making the incentive payments authorized by 23 U.S.C. 131(j).

### **§ 190.3 Agreement to control advertising.**

To qualify for the bonus payment, a State must have entered into an agreement with the Secretary to control outdoor advertising. It must fulfill,

and must continue to fulfill its obligations under such agreement consistent with 23 CFR 750.101.

### **§ 190.5 Bonus project claims.**

(a) The State may claim payment by submitting a form PR-20 voucher, supported by strip maps which identify advertising control limits and areas excluded from the claim and form FHWA-1175, for the one-half percent bonus claim.

(b) The bonus payment computation is based on projects or portions thereof for which (1) the section of highway on which the project is located has been opened to traffic, and (2) final payment has been made. A bonus project may cover an individual project, a part thereof, or a combination of projects, on a section of an Interstate route.

(c) The eligible system mileage to be shown for a bonus project is that on which advertising controls are in effect. The eligible system mileage reported in subsequent projects on the same Interstate route section should cover only the additional system mileage not previously reported. Eligible project cost is the total participating cost (State and Federal share of approved preliminary engineering (PE), right-of-way (R-O-W), and construction) exclusive of any ineligible costs. The amount of the bonus payment is to be based on the eligible total costs of the supporting projects included in each claim.

(d) Progress vouchers for route sections on which additional one-half percent bonus payments are to be claimed are to be so identified, and the final claim for each route section is to be identified as the final voucher.

### **§ 190.7 Processing of claims.**

Audited and approved PR-20 vouchers with form FHWA-1175 shall be forwarded to the regional office for submission to the Finance Division, Washington Headquarters, for payment. The associated strip maps shall be retained with the division office copies of the PR-20 vouchers.



## SUBCHAPTER C—CIVIL RIGHTS

### PART 200—TITLE VI PROGRAM AND RELATED STATUTES—IMPLEMENTATION AND REVIEW PROCEDURES

#### Sec.

- 200.1 Purpose.
- 200.3 Application of this part.
- 200.5 Definitions.
- 200.7 FHWA Title VI policy.
- 200.9 State highway agency responsibilities.
- 200.11 Procedures for processing Title VI reviews.
- 200.13 Certification acceptance.

**AUTHORITY:** Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619; 42 U.S.C. 4601 to 4655; 23 U.S.C. 109(h); 23 U.S.C. 324.

**SOURCE:** 41 FR 53982, Dec. 10, 1976, unless otherwise noted.

#### § 200.1 Purpose.

To provide guidelines for: (a) Implementing the Federal Highway Administration (FHWA) Title VI compliance program under Title VI of the Civil Rights Act of 1964 and related civil rights laws and regulations, and (b) Conducting Title VI program compliance reviews relative to the Federal-aid highway program.

#### § 200.3 Application of this part.

The provisions of this part are applicable to all elements of FHWA and provide requirements and guidelines for State highway agencies to implement the Title VI Program requirements. The related civil rights laws and regulations are listed under § 200.5(p) of this part. Title VI requirements for 23 U.S.C. 402 will be covered under a joint FHWA/NHTSA agreement.

#### § 200.5 Definitions.

The following definitions shall apply for the purpose of this part:

(a) **"Affirmative action"**—A good faith effort to eliminate past and present discrimination in all federally assisted programs, and to ensure future nondiscriminatory practices.

(b) **"Beneficiary"**—Any person or group of persons (other than States) entitled to receive benefits, directly or

indirectly, from any federally assisted program, i.e., relocatees, impacted persons, communities, etc.

(c) **"Citizen participation"**—An open process in which the rights of the community to be informed, to provide comments to the Government and to receive a response from the Government are met through a full opportunity to be involved and to express needs and goals.

(d) **"Compliance"**—That satisfactory condition existing when a recipient has effectively implemented all of Title VI requirements or can demonstrate that every good faith effort toward achieving this end has been made.

(e) **"Deficiency status"**—The interim period during which the recipient State has been notified of deficiency and has not voluntarily complied with Title VI Program guidelines, but has not been declared in noncompliance by the Secretary of Transportation.

(f) **"Discrimination"**—That action, whether intentional or unintentional, through which a person in the United States, solely because of race, color, religion, sex, or national origin, has been otherwise subjected to unequal treatment under any program or activity receiving financial assistance from the Federal Highway Administration under Title 23 U.S.C.

(g) **"Facility"**—Includes all, or a part of, structures, equipment or other real or personal property, or interests therein, and "the provision of facilities" includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(h) **"Federal assistance"**—Includes: (1) Grants and loans of Federal funds,

(2) The grant or donation of Federal property and interests in property,

(3) The detail of Federal personnel,

(4) The sale and lease of, and the permission to use (on other than casual or transient basis), Federal property or any interest in such property without consideration or at nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or

recognition of the public interest to be served by such sale or lease to the recipient, and

(5) Any Federal agreement, arrangement, or other contract which has, as one of its purposes, the provision of assistance.

(i) "Noncompliance"—A recipient has failed to meet prescribed requirements and has shown an apparent lack of good faith effort in implementing all of the Title VI requirements.

(j) "Persons"—Where designation of persons by race, color, or national origin is required, the following designations ordinarily may be used: "White not of Hispanic origin", "Black not of Hispanic origin", "Hispanic", "Asian or Pacific Islander", "American Indian or Alaskan Native." Additional subcategories based on national origin or primary language spoken may be used, where appropriate, on either a national or a regional basis.

(k) "Program"—Includes any highway, project, or activity for the provision of services, financial aid, or other benefits to individuals. This includes education or training, work opportunities, health, welfare, rehabilitation, housing, or other services, whether provided directly by the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient.

(l) "State highway agency"—That department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" would be considered equivalent to "State highway agency" if the context so implies.

(m) "Program area officials"—The officials in FHWA who are responsible for carrying out technical program responsibilities.

(n) "Recipient"—Any State, territory, possession, the District of Columbia, Puerto Rico, or any political subdivision, or instrumentality thereof, or any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal assistance is extended, either directly or through another recipient, for any

program. Recipient includes any successor, assignee, or transferee thereof. The term "recipient" does not include any ultimate beneficiary under any such program.

(o) "Secretary"—The Secretary of Transportation as set forth in 49 CFR 21.17(g)(3) or the Federal Highway Administrator to whom the Secretary has delegated his authority in specific cases.

(p) "Title VI Program"—The system of requirements developed to implement Title VI of the Civil Rights Act of 1964. References in this part to Title VI requirements and regulations shall not be limited to only Title VI of the Civil Rights Act of 1964. Where appropriate, this term also refers to the civil rights provisions of other Federal statutes to the extent that they prohibit discrimination on the grounds of race, color, sex, or national origin in programs receiving Federal financial assistance of the type subject to Title VI itself. These Federal statutes are:

(1) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-d4 (49 CFR, Part 21; the standard DOT Title VI assurances signed by each State pursuant to DOT Order 1050.2; Executive Order 11764; 28 CFR 50.3);

(2) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601-4655) (49 CFR Part 25; Pub. L. 91-646);

(3) Title VIII of the Civil Rights Act of 1968, amended 1974 (42 U.S.C. 3601-3619);

(4) 23 U.S.C. 109(h);

(5) 23 U.S.C. 324;

(6) Subsequent Federal-Aid Highway Acts and related statutes.

#### § 200.7 FHWA Title VI policy.

It is the policy of the FHWA to ensure compliance with Title VI of the Civil Rights Act of 1964; 49 CFR, Part 21; and related statutes and regulations.

#### § 200.9 State highway agency responsibilities.

(a) State assurances in accordance with Title VI of the Civil Rights Act of 1964.

(1) Title 49, CFR Part 21 (Department of Transportation Regulations for the implementation of Title VI of the Civil Rights Act of 1964) requires assurances from States that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal assistance from the Department of Transportation, including the Federal Highway Administration.

(2) Section 162a of the Federal-Aid Highway Act of 1973 (section 324, Title 23 U.S.C.) requires that there be no discrimination on the ground of sex. The FHWA considers all assurances heretofore received to have been amended to include a prohibition against discrimination on the ground of sex. These assurances were signed by the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa. The State highway agency shall submit a certification to the FHWA indicating that the requirements of section 162a of the Federal-Aid Highway Act of 1973 have been added to its assurances.

(3) The State highway agency shall take affirmative action to correct any deficiencies found by the FHWA within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with State-signed assurances and required guidelines. The head of the State highway agency shall be held responsible for implementing Title VI requirements.

(4) The State program area officials and Title VI Specialist shall conduct annual reviews of all pertinent program areas to determine the effectiveness of program area activities at all levels.

(b) *State actions.* (1) Establish a civil rights unit and designate a coordinator who has a responsible position in the organization and easy access to the head of the State highway agency. This unit shall contain a Title VI Equal Employment Opportunity Coordinator or a Title VI Specialist, who shall be responsible for initiating and

monitoring Title VI activities and preparing required reports.

(2) Adequately staff the civil rights unit to effectively implement State civil rights requirements.

(3) Develop procedures for processing and disposition of Title VI and Title VIII complaints received directly by the State and not by FHWA. Complaints shall be investigated by State civil rights personnel trained in compliance investigations. Identify each complainant by race, color, or national origin; the recipient; nature of the complaint; the date the complaint was filed and the investigation completed; the disposition; date of the disposition; and other pertinent information. Each recipient (State) processing Title VI complaints shall be required to maintain a similar log. A copy of the complaint, together with a copy of the State's report of investigation, shall be forwarded to the FHWA division office within 60 days of the date the complaint was received by the State.

(4) Develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in, and beneficiaries of State highway programs, i.e., recipients, impacted citizens and affected communities.

(5) Develop a program to conduct Title VI reviews of program areas.

(6) Conduct annual reviews of special emphasis program areas to determine the effectiveness or program area activities at all levels.

(7) Conduct Title VI reviews of cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds.

(8) Review State program directives in coordination with State program officials and, where applicable, include Title VI and related requirements.

(9) The State highway agency Title VI designee shall be responsible for conducting training programs on Title VI and related statutes for State program and civil rights officials.

(10) Prepare a yearly report of Title VI accomplishments for the past year and goals for the next year.

(11) Beginning October 1, 1976, each State highway agency shall annually

submit an updated Title VI implementing plan to the Regional Federal Highway Administrator for approval or disapproval.

(12) Develop Title VI information for dissemination to the general public and, where appropriate, in languages other than English.

(13) Establishing procedures for pre-grant and postgrant approval reviews of State programs and applicants for compliance with Title VI requirements; i.e., highway location, design and relocation, and persons seeking contracts with the State.

(14) Establish procedures to identify and eliminate discrimination when found to exist.

(15) Establishing procedures for promptly resolving deficiency status and reducing to writing the remedial action agreed to be necessary, all within a period not to exceed 90 days.

**§ 200.11 Procedures for processing Title VI reviews.**

(a) If the regional Title VI review report contains deficiencies and recommended actions, the report shall be forwarded by the Regional Federal Highway Administrator to the Division Administrator, who will forward it with a cover letter to the State highway agency for corrective action.

(b) The division office, in coordination with the Regional Civil Rights Officer, shall schedule a meeting with the recipient, to be held not later than 30 days from receipt of the deficiency report.

(c) Recipients placed in a deficiency status shall be given a reasonable time, not to exceed 90 days after receipt of the deficiency letter, to voluntarily correct deficiencies.

(d) The Division Administrator shall seek the cooperation of the recipient in correcting deficiencies found during the review. The FHWA officials shall also provide the technical assistance and guidance needed to aid the recipient to comply voluntarily.

(e) When a recipient fails or refuses to voluntarily comply with requirements within the time frame allotted, the Division Administrator shall submit to the Regional Administrator two copies of the case file and a rec-

ommendation that the State be found in noncompliance.

(f) The Office of Civil Rights shall review the case file for a determination of concurrence or nonconcurrence with a recommendation to the Federal Highway Administrator. Should the Federal Highway Administrator concur with the recommendation, the file is referred to the Department of Transportation, Office of the Secretary, for appropriate action in accordance with 49 CFR.

**§ 200.13 Certification acceptance.**

Title VI and related statutes requirements apply to all State highway agencies. States and FHWA divisions operating under certification acceptance shall monitor the Title VI aspects of the program by conducting annual reviews and submitting required reports in accordance with guidelines set forth in this document.

**PART 230—EXTERNAL PROGRAMS**

**Subpart A—Equal Employment Opportunity on Federal and Federal-Aid Construction Contracts (Including Supportive Services)**

Sec.

230.101 Purpose.

230.103 Definitions.

230.105 Applicability.

230.107 Policy.

230.109 Implementation of specific Equal Employment Opportunity requirements.

230.111 Implementation of special requirements for the provision of on-the-job training.

230.113 Implementation of supportive services.

230.115 Special contract requirements for "Hometown" or "Imposed" Plan areas.

230.117 Reimbursement procedures (Federal-aid highway construction projects only).

230.119 Monitoring of supportive services.

230.121 Reports.

**APPENDIX A—SPECIAL PROVISIONS**

**APPENDIX B—TRAINING SPECIAL PROVISIONS**

**APPENDIX C—FEDERAL-AID HIGHWAY CONTRACTORS ANNUAL EEO REPORT (FORM PR-1391)**

**APPENDIX D—FEDERAL-AID HIGHWAY CONSTRUCTION SUMMARY OF EMPLOYMENT DATE (FORM PR-1392)**

**APPENDIX E—FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTOR'S SEMIANNUAL TRAINING REPORT (FORM FHWA-1409)**

Sec.

**APPENDIX F—FEDERAL-AID HIGHWAY CONSTRUCTION SEMIANNUAL TRAINING REPORT (FORM FHWA-1410)**

**APPENDIX G—SPECIAL REPORTING REQUIREMENTS FOR "HOMETOWN" OR "IMPOSED" PLAN AREAS**

**Subpart B—Minority Business Enterprise in Federal-Aid Highway Construction**

- 230.201 Purpose.
- 230.203 Definitions.
- 230.205 Policy.
- 230.207 Action by State highway agencies.
- 230.209 Reports.

**Subpart C—State Highway Agency Equal Employment Opportunity Programs**

- 230.301 Purpose.
- 230.303 Applicability.
- 230.305 Definitions.
- 230.307 Policy.
- 230.309 Program format.
- 230.311 State responsibilities.
- 230.313 Approval procedure.

**APPENDIX A—STATE HIGHWAY AGENCY EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS**

**Subpart D—Construction Contract Equal Opportunity Compliance Procedures**

- 230.401 Purpose.
- 230.403 Applicability.
- 230.405 Administrative responsibilities.
- 230.407 Definitions.
- 230.409 Contract compliance review procedures.
- 230.411 Guidance for conducting reviews.
- 230.413 Review reports.
- 230.415 Consolidated compliance reviews.

**APPENDIX A—SAMPLE SHOW CAUSE NOTICE**

**APPENDIX B—SAMPLE CORRECTIVE ACTION PLAN**

**APPENDIX C—SAMPLE SHOW CAUSE RESCISON**

**APPENDIX D—EQUAL OPPORTUNITY COMPLIANCE REVIEW PROCESS FLOW CHART**

**AUTHORITY:** 23 U.S.C. 140 and 315; E.O. 11246; 49 CFR 1.48(b)24, unless otherwise noted.

**SOURCE:** 40 FR 28053, July 3, 1975, unless otherwise noted.

**Subpart A—Equal Employment Opportunity on Federal and Federal-Aid Construction Contracts (Including Supportive Services)**

**§ 230.101 Purpose.**

The purpose of the regulations in this subpart is to prescribe the policies, procedures, and guides relative to

the implementation of an equal employment opportunity program Federal and Federal-aid highway construction contracts, except for the contracts awarded under 23 U.S.C. 1 and to the preparation and submission of reports pursuant thereto.

**§ 230.103 Definitions.**

For purposes of this subpart—

**"Administrator"** means the Federal Highway Administrator.

**"Areawide Plan"** means an affirmative action plan to increase minority utilization of crafts in a specified geographical area pursuant to Executive Order 11246, and taking the form either a "Hometown" or an "Imposed plan."

**"Bid conditions"** means contract requirements which have been issued OFCC for purposes of implementing Hometown Plan.

**"Division Administrator"** means chief Federal Highway Administrator (FHWA) official assigned to conduct FHWA business in a particular State, the District of Columbia, or the Commonwealth of Puerto Rico.

**"Division Equal Opportunity Officer"** means an individual with staff level responsibilities and necessary authority by which to operate as Equal Opportunity Officer in a Division office. Normally the Equal Opportunity Officer will be a full-time rights specialist serving as staff assistant to the Division Administrator.

**"Hometown Plan"** means a voluntary areawide plan which was developed by representatives of affected groups (usually labor unions, minority organizations, and contractors), subsequently approved by the Office of Federal Contract Compliance (OFCC), for purposes of implementing the equal employment opportunity requirements pursuant to Executive Order 11246, as amended.

**"Imposed Plan"** means an affirmative action requirement for a specific geographical area made mandatory OFCC and, in some areas, by the courts.

**"Journeyman"** means a person who is capable of performing all the duties within a given job classification craft.

"State highway agency" means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" should be considered equivalent to "State highway agency."

"Suggested minimum annual training goals" means goals which have been assigned to each State highway agency annually for the purpose of specifying training positions on selected Federal-aid highway construction projects.

"Supportive services" means those services provided in connection with approved on-the-job training programs for highway construction workers and highway contractors which are designed to increase the overall effectiveness of training programs through the performance of functions determined to be necessary in connection with such programs, but which are not generally considered as comprising part of actual on-the-job craft training.

"Trainee" means a person who received on-the-job training, whether through an apprenticeship program or other programs approved or accepted by the FHWA.

(40 FR 2063, July 3, 1975, as amended at 41 FR 300, Jan. 21, 1976)

#### § 230.106 Applicability.

(a) *Federal-aid highway construction projects.* This subpart applies to all Federal-aid highway construction projects and to Appalachian highway construction projects and other State supervised cooperative highway construction projects except:

(1) Federal-aid highway construction projects being constructed pursuant to 23 U.S.C. 117; and

(2) Those projects located in areas where the Office of Federal Contract Compliance has implemented an "Imposed" or a "Hometown" Plan, except for those requirements pertaining to specific provisions involving on-the-job training and those provisions pertaining to supportive services and reporting requirements.

(b) *Direct Federal highway construction projects.* This subpart applies to all direct Federal highway construction projects except:

(1) For those provisions relating to the special requirements for the provision of supportive services; and

(2) For those provisions relating to implementation of specific equal employment opportunity requirements in areas where the Office of Federal Contract Compliance has implemented an "Imposed" or "Hometown" plan.

#### § 230.107 Policy.

(a) *Direct Federal and Federal-aid highway construction projects.* It is the policy of the FHWA to require that all direct Federal and Federal-aid highway construction contracts include the same specific equal employment opportunity requirements. It is also the policy to require that all direct Federal and Federal-aid highway construction subcontracts of \$10,000 or more (not including contracts for supplying materials) include these same requirements.

(b) *Federal-aid highway construction projects.* It is the policy of the FHWA to require full utilization of all available training and skill-improvement opportunities to assure the increased participation of minority groups and disadvantaged persons and women in all phases of the highway construction industry. Moreover, it is the policy of the Federal Highway Administration to encourage the provision of supportive services which will increase the effectiveness of approved on-the-job training programs conducted in connection with Federal-aid highway construction projects.

#### § 230.109 Implementation of specific Equal Employment Opportunity requirements.

(a) *Federal-aid highway construction projects.* The special provisions set forth in Appendix A shall be included in the advertised bidding proposal and made part of the contract for each contract and each covered Federal-aid highway construction subcontract.

(b) *Direct Federal highway construction projects.* Advertising, award and contract administration procedures for direct Federal highway construction contracts shall be as set forth in Federal Procurement Regulations (41

CFR 1-12.805). In order to obtain information required by 41 CFR 1-12.805-1(d), the following requirement shall be included at the end of the bid schedule in the proposal and contract assembly:

I expect to employ the following firms as subcontractors on this project: (Naming subcontractors at this time does not constitute a binding commitment on the bidder to retain such subcontractors, nor will failure to enter names affect the contract award):

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_

**§ 230.111 Implementation of special requirements for the provision of on-the-job training.**

(a) The State highway agency shall determine which Federal-aid highway construction contracts shall include the "Training Special Provisions" (Appendix B) and the minimum number of trainees to be specified therein after giving appropriate consideration to the guidelines set forth in § 230.111(c). The "Training Special Provisions" shall supersede section 7(b) of the Special Provisions (Appendix A) entitled "Specific Equal Employment Opportunity Responsibilities." Minor wording revisions will be required to the "Training Special Provisions" in areas having "Hometown" or "Imposed Plan" requirements.

(b) The Washington Headquarters shall establish and publish annually suggested minimum training goals. These goals will be based on the Federal-aid apportioned amounts and the minority population. A State will have achieved its goal if the total number of training slots on selected federally aided highway construction contracts which have been awarded during each 12-month period equals or exceeds the State's suggested minimum annual goal. In the event a State highway agency does not attain its goal during a calendar year, the State highway agency at the end of the calendar year shall inform the Administrator of the reasons for its inability to meet the suggested minimum number of training slots and the steps to be taken to achieve the goal during the next calendar year. The information is to be

submitted not later than 30 days from the end of the calendar year and should be factual, and should not only indicate the situations occurring during the year but show the projected conditions at least through the coming year. The final determination will be made on what training goals are considered to be realistic based on the information submitted by a State.

(c) The following guidelines shall be utilized by the State highway agency in selecting projects and determining the number of trainees to be provided training therein:

(1) Availability of minority women, and disadvantaged for training.

(2) The potential for effective training.

(3) Duration of the contract.

(4) Dollar value of the contract.

(5) Total normal work force that an average bidder could be expected to use.

(6) Geographic location.

(7) Type of work.

(8) The need for additional journeymen in the area.

(9) Recognition of the suggested minimum goal for the State.

(10) A satisfactory ratio of trainees to journeymen expected to be on contractor's work force during non-operations (considered to fall between 1:10 and 1:4).

(d) Training programs which are established shall be approved only if they meet the standards set forth in Appendix B with regard to:

(1) The primary objectives of training and upgrading minority group workers, women and disadvantaged persons.

(2) The development of full journeymen.

(3) The minimum length and type of training.

(4) The minimum wages of trainees.

(5) Trainees certifications.

(6) Keeping records and furnish reports.

(e)(1) Training programs considered by a State highway agency to meet the standards under this direct shall be submitted to the FHWA Division Administrator with a recommendation for approval.

(2) Employment pursuant to training programs approved by the FHWA division Administrator will be exempt from the minimum wage rate provisions of section 113 of Title 23, U.S.C. Approval, however, shall not be given to training programs which provide for employment of trainees at wages less than those required by the Special Training Provisions. (Appendix B.)

(f)(1) Apprenticeship programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor need not be formally approved by the State highway agency or the FHWA division Administrator. Such programs, including their minimum wage provisions, are acceptable for use, provided they are administered in a manner reasonably calculated to meet the equal employment opportunity obligations of the contractor.

(2) Other training programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor are also acceptable for use without the formal approval of the State highway agency or the division Administrator provided:

(i) The U.S. Department of Labor has clearly approved the program aspects relating to equal employment opportunity and the payment of trainee wage rates in lieu of prevailing wage rates.

(ii) They are reasonably calculated to qualify the average trainees for journeyman status in the classification concerned by the end of the training period.

(iii) They are administered in a manner calculated to meet the equal employment obligations of the contractors.

(g) The State highway agencies have the option of permitting Federal-aid highway construction contractors to bid on training to be given under this directive. The following procedures are to be utilized by those State highway agencies that elect to provide a bid item for training:

(1) The number of training positions shall continue to be specified in the Special Training Provisions. Furthermore, this number should be converted

into an estimated number of hours of training which is to be used in arriving at the total bid price for the training item. Increases and decreases from the estimated amounts would be handled as overruns or underruns;

(2) A section concerning the method of payment should be included in the Special Training Provisions. Some off-site training is permissible as long as the training is an integral part of an approved training program and does not comprise a substantial part of the overall training. Furthermore, the trainee must be concurrently employed on a federally aided highway construction project subject to the Special Training Provisions attached to this directive. Reimbursement for offsite training may only be made to the contractor where he does one or more of the following: Contributes to the cost of the training, provides the instruction to the trainee, or pays the trainee's wages during the offsite training period;

(3) A State highway agency may modify the special provisions to specify the numbers to be trained in specific job classifications;

(4) A State highway agency can specify training standards provided any prospective bidder can use them, the training standards are made known in the advertised specifications, and such standards are found acceptable by FHWA.

[40 FR 28053, July 3, 1975; 40 FR 57358, Dec. 9, 1975, as amended at 41 FR 3080, Jan. 21, 1976]

#### § 230.113 Implementation of supportive services.

(a) The State highway agency shall establish procedures, subject to the availability of funds under 23 U.S.C. 140(b), for the provision of supportive services in support of training programs approved under this directive. Funds made available to implement this paragraph shall not be used to finance the training of State highway agency employees or to provide services in support of such training. State highway agencies are not required to match funds allocated to them under this section.



(b) In determining the types of supportive services to be provided which will increase the effectiveness of approved training programs, State highway agencies shall give preference to the following types of services in the order listed:

(1) Services related to recruiting, counseling, transportation, physical examinations, remedial training, with special emphasis upon increasing training opportunities for members of minority groups and women;

(2) Services in connection with the administration of on-the-job training programs being sponsored by individual or groups of contractors and/or minority groups and women's groups;

(3) Services designed to develop the capabilities of prospective trainees for undertaking on-the-job training;

(4) Services in connection with providing a continuation of training during periods of seasonal shutdown;

(5) Followup services to ascertain outcome of training being provided.

(c) State highway agencies which desire to provide or obtain supportive services other than those listed above shall submit their proposals to the Federal Highway Administration for approval. The proposal, together with recommendations of the division and regional offices shall be submitted to the Administrator for appropriate action.

(d) When the State highway agency provides supportive services by contract, formal advertising is not required by the FHWA, however, the State highway agency shall solicit proposals from such qualified sources as will assure the competitive nature of the procurement. The evaluation of proposals by the State highway agency must include consideration of the proposer's ability to effect a productive relationship with contractors, unions (if appropriate), minority and women groups, minority and women trainees, and other persons or organizations whose cooperation and assistance will contribute to the successful performance of the contract work.

(e) In the selection of contractors to provide supportive services, State highway agencies shall make conscientious efforts to search out and utilize the services of qualified minority or

women organizations, or minority women business enterprises.

(f) As a minimum, State highway agency contracts to obtain supportive services shall include the following provisions:

(1) A statement that a primary purpose of the supportive services is to increase the effectiveness of approved on-the-job training programs, particularly their effectiveness in providing meaningful training opportunities for minorities, women, and the disadvantaged on Federal-aid highway projects.

(2) A clear and complete statement of the services to be provided under the contract, such as services to construction contractors, subcontractors and trainees, for recruiting, counseling, remedial educational training, assistance in the acquisition of tool special equipment and transportation followup procedures, etc.;

(3) The nondiscrimination provisions required by Title VI of the Civil Rights Act of 1964 as set forth in FHWA Form PR-1273, and a statement of nondiscrimination in employment because of race, color, religion, national origin or sex;

(4) The establishment of a definite period of contract performance together with, if appropriate, a schedule stating when specific supportive services are to be provided;

(5) Reporting requirements pursuant to which the State highway agency will receive monthly or quarterly reports containing sufficient statistical data and narrative content to enable evaluation of both progress and problems;

(6) A requirement that the contractor keep track of trainees receiving training on Federal-aid highway construction projects for up to 6 months during periods when their training is interrupted. Such contracts shall also require the contractor to conduct a month followup review of the employment status of each graduate who completes an on-the-job training program on a Federal-aid highway construction project subsequent to the effective date of the contract for supportive services.

(7) The basis of payment;

(8) An estimated schedule for expenditures;

(9) The right of access to contractor and subcontractor records and the right to audit shall be granted to authorized State highway agency and FHWA officials;

(10) Noncollusion certification;

(11) A requirement that the contractor provide all information necessary to support progress payments if such are provided for in the contract;

(12) A termination clause.

(g) The State highway agency is to furnish copies of the reports received under paragraph (b)(5) of this section, to the division office.

(40 FR 28053, July 3, 1975, as amended at 41 FR 3080, Jan. 21, 1976)

**§ 230.115 Special contract requirements for "Hometown" or "Imposed" Plan areas.**

Direct Federal and Federal-aid contracts to be performed in "Hometown" or "Imposed" Plan areas will incorporate the special provision set forth in Appendix G.

**§ 230.117 Reimbursement procedures (Federal-aid highway construction projects only).**

(a) *On-the-job special training provisions.* State highway agencies will be reimbursed on the same pro-rata basis as the construction costs of the Federal-aid project.

(b) *Supportive services.* (1) The State highway agency must keep a separate account of supportive services funds since they cannot be interchanged with regular Federal-aid funds. In addition, these funds may not be expended in a manner that would provide for duplicate payment of Federal or Federal-aid funds for the same service.

(2) Where a State highway agency does not obligate all its funds within the time specified in the particular year's allocation directive, the funds shall revert to the FHWA Headquarters Office to be made available for use by other State highway agencies, taking into consideration each State's need for and ability to use such funds.

**§ 230.119 Monitoring of supportive services.**

Supportive services procured by a State highway agency shall be moni-

tored by both the State highway agency and the division office.

**§ 230.121 Reports.**

(a) Employment reports on Federal-aid highway construction contracts not subject to "Hometown" or "Imposed" plan requirements.

(1) Paragraph 10c of the special provisions (Appendix A) sets forth specific reporting requirements. FHWA Form PR-1391, Federal-Aid Highway Construction Contractors Annual EEO Report, (Appendix C) and FHWA Form PR 1392, Federal-Aid Highway Construction Summary of Employment Data (including minority breakdown) for all Federal-Aid Highway Projects for month ending July 31st, 19—, (Appendix D) are to be used to fulfill these reporting requirements.

(2) Form PR 1391 is to be completed by each contractor and each subcontractor subject to this part for every month of July during which work is performed, and submitted to the State highway agency. A separate report is to be completed for each covered contract or subcontract. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month. The State highway agency is to forward a single copy of each report to the FHWA division office.

(3) Form PR 1392 is to be completed by the State highway agencies, summarizing the reports on PR 1391 for the month of July received from all active contractors and subcontractors. Three (3) copies of completed Forms PR 1392 are to be forwarded to the division office.

(b) Employment reports on direct Federal highway construction contracts not subject to "Hometown" or "Imposed" plan requirements. Forms PR 1391 (Appendix C) and PR 1392 (Appendix D) shall be used for reporting purposes as prescribed in § 230.121(a).

(c) Employment reports on direct Federal and Federal-aid highway construction contracts subject to "Hometown" or "Imposed" plan requirements.

(1) Reporting requirements for direct Federal and Federal-aid highway construction projects located in areas where "Hometown" or "Imposed" plans are in effect shall be in accordance with those issued by the U.S. Department of Labor, Office of Federal Contract Compliance.

(2) In order that we may comply with the U.S. Senate Committee on Public Works' request that the Federal Highway Administration submit a report annually on the status of the equal employment opportunity program, Form PR 1391 is to be completed annually by each contractor and each subcontractor holding contracts or subcontracts exceeding \$10,000 except as otherwise provided for under 23 U.S.C. 117. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month of July.

(d) On-the-job training reports for Federal-aid highway construction projects pursuant to the training special provision (Appendix B).

(1) State highway agencies are to require contractors subject to the training special provision to maintain records of training on each trainee. In addition, the contractor is to complete a semi-annual report (see Appendix E, Form FHWA 1409, Federal-Aid Highway Construction Contractor's Semi-annual Training Report) for each trainee receiving training under the special provision. The contractor is to submit reports for any training under the training special provision which is provided by any of his subcontractors. The contractor is to submit the semi-annual reports by the 20th of each July and January. The original of the report will be furnished to the trainee and two copies forwarded to the State highway department. The State highway agency is to review the report for accuracy and completeness and transmit one copy of it to the FHWA division office.

(2) The State highway agencies are to complete a semi-annual report (see Appendix F, Form FHWA 1410, Federal-Aid Highway Construction Semi-annual Training Report) summarizing the individual training reports (Form FHWA 1409) submitted by the con-

tractors. Three copies of the completed report are to be transmitted to the FHWA division office by the 30th of the month following the end of the reporting period.

(e) Reports on supportive services contracts. The State highway agency is to furnish copies of the reports received from supportive services contractors to the FHWA division of which will furnish a copy to the regional office.

[40 FR 28053, July 3, 1975, as amended; 41 FR 19386, May 5, 1978]

## APPENDIX A—SPECIAL PROVISION

### SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES

1. *General.* a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11625 are set forth in Required Contract Provisions (Form PR-1273 or 1316, as appropriate) and these Special Provisions which imposed pursuant to Section 140 of Title 23 U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement equal employment opportunity requirements set forth in the Required Contract Provisions.

b. The contractor will work with the State highway agencies and the Federal Government in carrying out equal employment opportunity obligations and in their review his/her activities under the contract.

c. The contractor and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, comply with the following minimum special requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter Section 1, Subsection 1 of the Federal Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The contractor will include these requirements in every subcontract of \$10,000 or more with such modifications in language as is necessary to make them binding on the subcontractor.

2. *Equal Employment Opportunity Policy.* The contractor will accept as his operating policy the following statement which is signed to further the provision of equal

employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

**3. Equal Employment Opportunity Officer.** The contractor will designate and make known to the State highway agency contracting officers and equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

**4. Dissemination of Policy.** a. All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

(1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

(3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.

b. In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:

(1) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**5. Recruitment.** a. When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

b. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

**6. Personnel Actions.** Wages, working conditions, and employee benefits shall be es-

established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

7. *Training and Promotion.* a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Training Special Provision is provided under this contract, this subparagraph will be superseded as indicated in Attachment 2.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. *Unions.* If the contractor relies in whole or in part upon unions as a source of em-

ployees, the contractor will use his/her efforts to obtain the cooperation of unions to increase opportunities for minority groups and women within the union and to effect referrals by such unions of minority and female employees. Actions by contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the union, joint training programs aimed toward qualifying more minority group members and women for membership in the unions, increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement at the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such union refuses to furnish such information to the contractor, the contractor shall certify to the State highway department and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable number of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill employment vacancies without regard to race, color, religion, sex, or national origin, making full efforts to obtain qualified or qualifiable minority group persons and women. (The U.S. Department of Labor held that it shall be no excuse that union with which the contractor has a collective bargaining agreement providing exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the State highway agency.

9. *Subcontracting.* a. The contractor will use his best efforts to solicit bids from minority group subcontractors and subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from State highway agency personnel.

b. The contractor will use his best efforts to ensure subcontractor compliance with

their equal employment opportunity obligations.

10. **Records and Reports.** a. The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

(1) The number of minority and nonminority group members and women employed in each work classification on the project.

(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force).

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and

(4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State highway agency and the Federal Highway Administration.

c. The contractors will submit an annual report to the State highway agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA 1391. If on-the-job training is being required by "Training Special Provision", the contractor will be required to furnish Form FHWA 1409.

46 FR 28053, July 3, 1975, as amended at 43 FR 19386, May 5, 1978. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

## APPENDIX B—TRAINING SPECIAL PROVISIONS

This Training Special Provision supercedes subparagraph 7b of the Special Provision entitled "Specific Equal Employment Opportunity Responsibilities," (Attachment A) and is in implementation of 23 U.S.C. 104(a).

As part of the contractor's equal employment opportunity affirmative action program training shall be provided as follows:

The contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.

The number of trainees to be trained under the special provisions will be \_\_\_\_\_ (amount to be filled in by State highway department).

In the event that a contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The contractor shall also insure that this training special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the contractor shall submit to the State highway agency for approval the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the contractor shall specify the starting time for training in each of the classifications. The contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journeymen status is a primary objective of this Training Special Provision. Accordingly, the contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used the

contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the contractor and approved by the State highway agency and the Federal Highway Administration. The State highway agency and the Federal Highway Administration shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other does not specifically prohibit the contractor from receiving

other reimbursement. Reimbursement offsite training indicated above may only be made to the contractor where he does or more of the following and the trainee are concurrently employed on a Federal project; contributes to the cost of the training, provides the instruction to the trainee or pays the trainee's wages during the site training period.

No payment shall be made to the contractor if either the failure to provide the required training, or the failure to hire a trainee as a journeyman, is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work using the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. It is not required that all trainees be on the project for the entire length of the contract. A contractor will have fulfilled his responsibility under this Training Special Provision if he has provided acceptable training to the number of trainees specified. The number of trainees shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyman rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, appropriate rates approved by the Departments of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this Training Special Provision.

The contractor shall furnish the trainee a copy of the program he will follow in providing the training. The contractor shall provide each trainee with a certificate showing the type and length of training satisfactorily completed.

The contractor will provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision.

[40 FR 28053, July 3, 1975. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

## 53

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APPENDIX D

|                                                                                                                                                         |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|--|-----------------|--|------------------|--|-------|--|--------------------------------------------------------|--|----------------------------------|--|----------------------------|--|-------|--|-------------|--|---------------------|--|
| FEDERAL-AID HIGHWAY CONSTRUCTION                                                                                                                        |  |                 |  |                  |  |       |  |                                                        |  | DEPARTMENT OF TRANSPORTATION     |  | OMB NO. 04-R-242-7         |  |       |  |             |  |                     |  |
| SUMMARY OF EMPLOYMENT DATA (INCLUDING MINORITY BREAKDOWN) FOR ALL                                                                                       |  |                 |  |                  |  |       |  |                                                        |  | FEDERAL HIGHWAY ADMINISTRATION   |  |                            |  |       |  |             |  |                     |  |
| FEDERAL-AID HIGHWAY PROJECTS FOR MONTH ENDING JULY 31st, 19 _____                                                                                       |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| NOTE: See Instructions on REVERSE                                                                                                                       |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| STATE REGION (6-9)                                                                                                                                      |  |                 |  |                  |  |       |  |                                                        |  | NUMBER OF PROJECTS (6-12)        |  | TOTAL DOLLAR VALUE (13-23) |  |       |  |             |  |                     |  |
| 01                                                                                                                                                      |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| EMPLOYMENT DATA                                                                                                                                         |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| T-300 A                                                                                                                                                 |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| JOB CATEGORIES                                                                                                                                          |  | TOTAL EMPLOYEES |  | TOTAL MINORITIES |  | BLACK |  | HISPANIC                                               |  | AMERICAN INDIAN OR ALASKA NATIVE |  | ASIAN OR PACIFIC ISLANDER  |  | WHITE |  | APPRENTICES |  | ON THE JOB TRAINEES |  |
|                                                                                                                                                         |  | M F             |  | M F              |  | M F   |  | M F                                                    |  | M F                              |  | M F                        |  | M F   |  | M F         |  | M F                 |  |
| 02 OFFICIALS (MANAGERS)                                                                                                                                 |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| 03 SUPERVISORS                                                                                                                                          |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| 04 FOREMEN/WOMEN                                                                                                                                        |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| 05 CLERICAL                                                                                                                                             |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| 06 EQUIPMENT OPERATORS                                                                                                                                  |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| 07 MECHANICS                                                                                                                                            |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| 08 TRUCK DRIVERS                                                                                                                                        |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| 09 IRONWORKERS                                                                                                                                          |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| 10 CARPENTERS                                                                                                                                           |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| 11 CEMENT MASONS                                                                                                                                        |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| 12 ELECTRICIANS                                                                                                                                         |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| 13 PIPEFITTERS, PLUMBERS                                                                                                                                |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| 14 PAINTERS                                                                                                                                             |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| 15 LABORERS, SEMI-SKILLED                                                                                                                               |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| 16 LABORERS, UNSKILLED                                                                                                                                  |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| 17 TOTAL                                                                                                                                                |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| Table B                                                                                                                                                 |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| 18 APPRENTICES                                                                                                                                          |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| 19 ON THE JOB TRAINEES                                                                                                                                  |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |
| PREPARED BY (Signature & Title)                                                                                                                         |  |                 |  | DATE             |  |       |  | REVIEWED BY (Signature & Title of State Hwy. Official) |  |                                  |  | DATE                       |  |       |  |             |  |                     |  |
| This report is required by law and regulation (23 U.S.C. 144 and 23 CFR Part 230). Failure to report will result in noncompliance with this regulation. |  |                 |  |                  |  |       |  |                                                        |  |                                  |  |                            |  |       |  |             |  |                     |  |

## GENERAL INFORMATION AND INSTRUCTIONS

This form is to be developed from the "Contractor's Annual EEO Report." This data is to be compiled by the State and submitted annually. It should reflect the total employment on all Federal-Aid Highway Projects in the State as of July 31st. The staffing figures to be reported should represent the project work force on board in all or any part of the last payroll period preceding the end of July. The staffing figures to be reported in Table A should include journey-level men and women, apprentices, and on-the-job trainees. Staffing figures to be reported in Table B should include only apprentices and on-the-job trainees as indicated.

Entries made for "Job Categories" are to be confined to the listing shown. Miscellaneous job classifications are to be incorporated in the most appropriate category listed on the form. All employees on projects should thus be accounted for.

This information will be useful in complying with the U.S. Senate Committee on Public Works request that the Federal Highway Administration submit a report annually on the status of the Equal Employment Opportunity Program, its effectiveness, and progress made by the States and the Administration in carrying out Section 22(A) of the Federal-Aid Highway Act of 1968. In addition, the form should be used as a valuable tool for States to evaluate their own programs for ensuring equal opportunity.

It is requested that States submit this information annually to the FHWA Divisions no later than August 25.

Line 01—State & Region Code. Enter the 4-digit code from the list below.

|                           |       |                     |       |
|---------------------------|-------|---------------------|-------|
| Alabama.....              | 01-04 | Montana.....        | 30-08 |
| Alaska.....               | 02-10 | Nebraska.....       | 31-07 |
| Arizona.....              | 04-09 | Nevada.....         | 32-09 |
| Arkansas.....             | 05-06 | New Hampshire.....  | 33-01 |
| California.....           | 06-08 | New Jersey.....     | 34-01 |
| Colorado.....             | 08-08 | New Mexico.....     | 35-08 |
| Delaware.....             | 10-03 | North Carolina..... | 37-04 |
| District of Columbia..... | 11-03 | North Dakota.....   | 38-08 |
| Florida.....              | 12-04 | Ohio.....           | 39-05 |
| Georgia.....              | 13-04 | Oklahoma.....       | 40-08 |
| Hawaii.....               | 15-09 | Oregon.....         | 41-10 |
| Idaho.....                | 16-10 | Pennsylvania.....   | 42-03 |
| Illinois.....             | 17-05 | Puerto Rico.....    | 43-01 |
| Iowa.....                 | 19-07 | South Carolina..... | 45-04 |
| Kansas.....               | 20-07 | South Dakota.....   | 46-08 |
| Kentucky.....             | 21-04 | Tennessee.....      | 47-04 |
| Louisiana.....            | 22-06 | Texas.....          | 48-08 |
| Maine.....                | 23-01 | Utah.....           | 49-08 |
| Maryland.....             | 24-03 | Vermont.....        | 50-01 |
| Massachusetts.....        | 25-01 | Virginia.....       | 51-03 |
| Michigan.....             | 26-05 | Washington.....     | 53-10 |
| Minnesota.....            | 27-05 | West Virginia.....  | 54-03 |
| Mississippi.....          | 28-04 | Wisconsin.....      | 55-05 |
| Missouri.....             | 29-07 | Wyoming.....        | 56-08 |

(2) U.S.C. Sec. 140(a), 315, 49 CFR 1.48(b))

(4) FR 46832, Aug. 8, 1979. Correctly redesignated at 46 FR 21156, Apr. 9, 1981)

## APPENDIX E

FORM APPROVED  
OMB NO. 04-R2

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                            |                                                                  |                                                                                                                       |                                                                        |              |              |              |              |              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|--------------|--------------|--------------|--------------|--------------|
| U.S. DEPARTMENT OF TRANSPORTATION<br>FEDERAL HIGHWAY ADMINISTRATION<br><br>FEDERAL-AID HIGHWAY CONSTRUCTION<br>CONTRACTOR'S SEMIANNUAL TRAINING REPORT                                                                                                                                                                                                                                                                                                                                                                            |                                            |                                                                  |                                                                                                                       | REPORTS CONTROL SYMBOL<br><br>HMO-30-16<br><br>FEDERAL-AID PROJECT NO. |              |              |              |              |              |
| INSTRUCTIONS: This report is to be completed by the contractor semiannually for each individual employed on this contract (including any subcontracts under it who has received training during the reporting period under the training special provision (attachment 2 FHPM 6-4-1.2)). The report is to be submitted by the 20th of the month following the reporting period. (July 20, and January 20). The original of this report is to be furnished to the trainee and two copies submitted to the State Highway Department. |                                            |                                                                  |                                                                                                                       |                                                                        |              |              |              |              |              |
| 1. NAME OF CONTRACTOR                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                            |                                                                  | 1A. ADDRESS                                                                                                           |                                                                        |              |              |              |              |              |
| 2. NAME OF TRAINEE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                            | 2A. SEX<br><input type="checkbox"/> M <input type="checkbox"/> F | 2B. ADDRESS                                                                                                           |                                                                        |              |              |              |              |              |
| 3. AGE OF TRAINEE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 4. SOCIAL SECURITY NUMBER                  |                                                                  | 5. EMPLOYEE STATUS (CHECK ONE)<br><input type="checkbox"/> NEW HIRE <input type="checkbox"/> UP-GRADE                 |                                                                        |              |              |              |              |              |
| 6. ETHNIC GROUP DESIGNATION (CHECK ONE)<br><br><input type="checkbox"/> NEGRO <input type="checkbox"/> ORIENTAL <input type="checkbox"/> AMERICAN INDIAN <input type="checkbox"/> SPANISH AMERICAN <input type="checkbox"/> OTHER                                                                                                                                                                                                                                                                                                 |                                            |                                                                  |                                                                                                                       |                                                                        |              |              |              |              |              |
| 7. SUMMARY OF PREVIOUS TRAINING: (ENTER AMOUNT AND TYPE OF TRAINING RECEIVED BY TRAINEE ON OTHER CONTRACTS UNDER APPROVED TRAINING PROGRAMS)                                                                                                                                                                                                                                                                                                                                                                                      |                                            |                                                                  |                                                                                                                       |                                                                        |              |              |              |              |              |
| 8. JOB CLASSIFICATION OF TRAINEE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                            | 9. DATE TRAINING STARTED ON THIS CONTRACT                        | 10. TYPE OF ON THE JOB TRAINING (CHECK ONE)<br><input type="checkbox"/> APPRENTICESHIP <input type="checkbox"/> OTHER |                                                                        |              |              |              |              |              |
| REPORTING PERIODS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                            |                                                                  |                                                                                                                       |                                                                        |              |              |              |              |              |
| INSTRUCTIONS: One vertical column is to be completed for each succeeding reporting period and the form submitted. Enter June 30, Dec. 30, as applicable in columns A thru H below.                                                                                                                                                                                                                                                                                                                                                |                                            |                                                                  |                                                                                                                       |                                                                        |              |              |              |              |              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | HOURS OF TRAINING DATA                     | A<br>19 ____                                                     | B<br>19 ____                                                                                                          | C<br>19 ____                                                           | D<br>19 ____ | E<br>19 ____ | F<br>19 ____ | G<br>19 ____ | H<br>19 ____ |
| 11.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | PROVIDED DURING REPORT PERIOD              |                                                                  |                                                                                                                       |                                                                        |              |              |              |              |              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | PROVIDED TO DATE                           |                                                                  |                                                                                                                       |                                                                        |              |              |              |              |              |
| 12.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | REMAINING TO COMPLETE THE APPROVED PROGRAM |                                                                  |                                                                                                                       |                                                                        |              |              |              |              |              |
| 14. TERMINATION (IF TRAINING WAS TERMINATED PRIOR TO COMPLETION OF APPROVED PROGRAM EXPLAIN REASON FOR TERMINATION)                                                                                                                                                                                                                                                                                                                                                                                                               |                                            |                                                                  |                                                                                                                       |                                                                        |              |              |              |              |              |
| 15. REPORT PREPARED BY (SIGNATURE AND TITLE OF CONTRACTOR'S REPRESENTATIVE)                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                            |                                                                  |                                                                                                                       |                                                                        | 16. DATE     |              |              |              |              |
| 16. REPORT REVIEWED BY (SIGNATURE AND TITLE OF STATE HIGHWAY OFFICIAL)                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                            |                                                                  |                                                                                                                       |                                                                        | 17. DATE     |              |              |              |              |

Form FHWA-1409  
(Rev. 1-78)

PREVIOUS EDITIONS ARE OBSOLETE

[43 FR 19388, May 5, 1978. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

## APPENDIX F

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION  
COMPLIANCE REPORT  
REPORTS CONTROL  
HMD-5015

FEDERAL - AID HIGHWAY CONSTRUCTION SEMIANNUAL  
TRAINING REPORT

NOTE: TO BE COMPLETED BY STATE HIGHWAY DEPARTMENT (See instructions on reverse side)

STATE \_\_\_\_\_ PERIOD ENDING \_\_\_\_\_

LEGEND

| LINE NO. | TRAINING CLASSIFICATION                                                                | NUMBER RECEIVING TRAINING DURING REPORT PERIOD |       |       |       | NUMBER STARTING TRAINING DURING REPORT PERIOD |       |       |       | NUMBER COMPLETING TRAINING DURING REPORT PERIOD |       |       |       | TOTAL HOURS OF TRAINING DURING REPORT PERIOD |       |       |       |       |
|----------|----------------------------------------------------------------------------------------|------------------------------------------------|-------|-------|-------|-----------------------------------------------|-------|-------|-------|-------------------------------------------------|-------|-------|-------|----------------------------------------------|-------|-------|-------|-------|
|          |                                                                                        | A                                              |       | B     |       | C                                             |       | D     |       | E                                               |       | F     |       | G                                            |       |       |       |       |
|          |                                                                                        | 10-12                                          | 13-15 | 16-18 | 19-21 | 22-24                                         | 25-27 | 28-30 | 31-33 | 34-36                                           | 37-39 | 40-42 | 43-45 | 46-48                                        | 49-51 | 52-54 | 55-57 | 58-60 |
| 03       | EQUIPMENT OPERATORS                                                                    |                                                |       |       |       |                                               |       |       |       |                                                 |       |       |       |                                              |       |       |       |       |
| 04       | MECHANICS                                                                              |                                                |       |       |       |                                               |       |       |       |                                                 |       |       |       |                                              |       |       |       |       |
| 05       | TRUCK DRIVERS                                                                          |                                                |       |       |       |                                               |       |       |       |                                                 |       |       |       |                                              |       |       |       |       |
| 06       | IRON WORKERS                                                                           |                                                |       |       |       |                                               |       |       |       |                                                 |       |       |       |                                              |       |       |       |       |
| 07       | CARPENTERS                                                                             |                                                |       |       |       |                                               |       |       |       |                                                 |       |       |       |                                              |       |       |       |       |
| 08       | CEMENT MASONS                                                                          |                                                |       |       |       |                                               |       |       |       |                                                 |       |       |       |                                              |       |       |       |       |
| 09       | ELECTRICIANS                                                                           |                                                |       |       |       |                                               |       |       |       |                                                 |       |       |       |                                              |       |       |       |       |
| 10       | PIPEFITTERS PLUMBERS                                                                   |                                                |       |       |       |                                               |       |       |       |                                                 |       |       |       |                                              |       |       |       |       |
| 11       | PAINTERS                                                                               |                                                |       |       |       |                                               |       |       |       |                                                 |       |       |       |                                              |       |       |       |       |
| 12       | OTHER SKILLS                                                                           |                                                |       |       |       |                                               |       |       |       |                                                 |       |       |       |                                              |       |       |       |       |
| 13       | TOTAL                                                                                  |                                                |       |       |       |                                               |       |       |       |                                                 |       |       |       |                                              |       |       |       |       |
| 14       | NUMBER OF FEMALES RECEIVING TRAINING                                                   |                                                |       |       |       |                                               |       |       |       |                                                 |       |       |       |                                              |       |       |       |       |
|          | NUMBER OF NEW-HIRES RECEIVING TRAINING                                                 |                                                |       |       |       |                                               |       |       |       |                                                 |       |       |       |                                              |       |       |       |       |
|          | NUMBER OF UP-GRADES RECEIVING TRAINING                                                 |                                                |       |       |       |                                               |       |       |       |                                                 |       |       |       |                                              |       |       |       |       |
|          | NUMBER OF FEMALES STARTING TRAINING                                                    |                                                |       |       |       |                                               |       |       |       |                                                 |       |       |       |                                              |       |       |       |       |
|          | NUMBER OF FEMALES COMPLETING TRAINING                                                  |                                                |       |       |       |                                               |       |       |       |                                                 |       |       |       |                                              |       |       |       |       |
|          | NUMBER OF TERMINATIONS PRIOR TO COMPLETION OF TRAINING                                 |                                                |       |       |       |                                               |       |       |       |                                                 |       |       |       |                                              |       |       |       |       |
|          | NUMBER OF PROJECTS UNDER WAY DURING REPORTING PERIOD AND CONTAINING SPECIAL PROVISIONS |                                                |       |       |       |                                               |       |       |       |                                                 |       |       |       |                                              |       |       |       |       |

COMMENTS \_\_\_\_\_

REPORT PREPARED BY (SIGNATURE) AND TITLE OF STATE OFFICIAL \_\_\_\_\_ DATE \_\_\_\_\_

FORM FHWA-1410 (Rev. 1-78)

PREVIOUS EDITIONS ARE OBSOLETE

Page 1

43 FR 19389, May 5, 1978. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

**APPENDIX G—SPECIAL REPORTING REQUIREMENTS FOR “HOMETOWN” OR “IMPOSED” PLAN AREAS**

In addition to the reporting requirements set forth elsewhere in this contract the contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR-1391 (Appendix C to 23 CFR, Part 230) and in accordance with the instructions included thereon.

[40 FR 28053, July 3, 1975. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

**Subpart B—Minority Business Enterprise in Federal-Aid Highway Construction**

**AUTHORITY:** 23 U.S.C. 315; 49 CFR 1.48(b), unless otherwise noted.

**SOURCE:** 40 FR 50712, Oct. 31, 1975, unless otherwise noted.

**§ 230.201 Purpose.**

The purpose of the regulations in this subpart is to obtain increased participation by minority business firms in Federal-aid highway construction activity.

**§ 230.203 Definitions.**

(a) “Minority business enterprises” means a business at least 50 percent of which is owned by minority group members or, in the case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purpose of this definition “minority group members” are Negroes, Spanish-speaking American persons, American Orientals, American Indians, American Eskimos, and American Aleuts.

(b) “State highway agency” means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term “State” is considered equivalent to “State highway agency” if the context so implies.

**§ 230.205 Policy.**

Based on the provisions of Executive Order 11625, dated October 13, 1971, it is the policy of the Federal Highway Administration (FHWA) to promote increased participation of minority

business enterprises in Federal highway construction programs.

**§ 230.207 Action by State highway agencies.**

(a) State highway agencies and FHWA division administrators shall review and evaluate the State highway agencies’ prequalification and licensing requirements for Federal-aid highway construction contracts to assure that unreasonably complex, costly, difficult requirements are not utilized. Specific attention shall be given to minimum contract dollar value requirements for prequalification or licensing based on qualifications.

(b) The State highway agencies shall take affirmative action to increase participation of minority business firms in Federal-aid highway construction. This affirmative action shall include the following:

(1) Seek out, identify, and compile a list of minority business firms that wish to participate in the Federal highway construction program and distribute the list to all prime contractors taking out contract proposals for Federal-aid projects. Minority and other firms shall be provided with an opportunity to obtain identification as general contractors who have taken out contract proposals, unless disclosure of such information is prohibited by State law.

(2) Include appropriate provisions in the advertised specifications for Federal-aid contracts requiring bidders to submit certifications stating whether or not they intend to subcontract a portion of the work and, if so, if they have taken affirmative action to seek out and consider minority business enterprises as potential subcontractors. The provisions shall specify that each bidder intending to subcontract part of the contract work shall make contact with potential minority business enterprise subcontractors to

Potential minority business enterprise subcontractors will be identified in the State highway agency’s current list of interested firms or from other appropriate sources.

firmatively solicit their interest, capability, and prices and shall document the results of such contacts. A bidder's failure to submit this certification or submission of a false certification shall render his bid nonresponsive.

(3) Include appropriate provisions in Federal-aid contracts to assure that prime contractors requesting permission to sublet part of the contract work take the affirmative actions required of bidders in paragraph (b)(2) of this section if they have not done so during the bidding stage. These provisions shall specify that no subletting will be approved unless the prime contractor demonstrates he has taken such affirmative actions.

(4) Include contract provisions in Federal-aid construction contracts requiring the contractor to designate a liaison officer who will administer the contractor's minority business enterprise program.

**§ 230.209 Reports.**

Minority business contract and sub-contract awards are to be reported quarterly on revised Form FHWA 1405 (October, 1974).

**Subpart C—State Highway Agency Equal Employment Opportunity Programs**

**AUTHORITY:** 23 U.S.C. 140(a), 315; E.O. 11246; 41 CFR 60-1; 49 CFR 1.48.

**SOURCE:** 41 FR 28270, July 9, 1976, unless otherwise noted.

**§ 230.301 Purpose.**

The purpose of the regulations in this subpart is to set forth Federal Highway Administration (FHWA) Federal-aid policy and FHWA and State responsibilities relative to a State highway agency's internal equal employment opportunity program and for assuring compliance with the equal employment opportunity requirements of federally-assisted highway construction contracts.

**§ 230.303 Applicability.**

The provisions of this subpart are applicable to all States that receive Federal financial assistance in connection with the Federal-aid highway program.

**§ 230.305 Definitions.**

As used in this subpart, the following definitions apply:

(a) *"Affirmative Action Plan"* means:

(1) With regard to State highway agency work forces, a written document detailing the positive action steps the State highway agency will take to assure internal equal employment opportunity (internal plan).

(2) With regard to Federal-aid construction contract work forces, the Federal equal employment opportunity bid conditions, to be enforced by a State highway agency in the plan areas established by the Secretary of Labor and FHWA special provisions in nonplan areas (external plan).

(b) *"Equal employment opportunity program"* means the total State highway agency program, including the affirmative action plans, for ensuring compliance with Federal requirements both in State highway agency internal employment and in employment on Federal-aid construction projects.

(c) *Minority groups.* An employee may be included in the minority group to which he or she appears to belong, or is regarded in the community as belonging. As defined by U.S. Federal agencies for employment purposes, minority group persons in the U.S. are identified as Blacks (not of Hispanic origin), Hispanics, Asian or Pacific Islanders, and American Indians or Alaskan Natives.

(d) *Racial/ethnic identification.* For the purpose of this regulation and any accompanying report requirements, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one racial/ethnic category. The following group categories will be used:

(1) The category "White (not of Hispanic origin)": All persons having origins in any of the original peoples of Europe, North Africa, the Middle East, or the Indian Subcontinent.

(2) The category "Black (not of Hispanic origin)": All persons having origins in any of the Black racial groups.

(3) The category "Hispanic": All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

(4) The category "Asian or Pacific Islanders": All persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

(5) The category "American Indian or Alaskan Native": All persons having origins in any of the original peoples of North America.

(e) "State" means any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(f) "State highway agency" means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" should be considered equivalent to "State highway agency" if the context so implies.

[41 FR 28270, July 9, 1976, as amended at 41 FR 46293, Oct. 20, 1976]

### § 230.307 Policy.

Every employee and representative of State highway agencies shall perform all official equal employment opportunity actions in an affirmative manner, and in full accord with applicable statutes, executive orders, regulations, and policies enunciated thereunder, to assure the equality of employment opportunity, without regard to race, color, religion, sex, or national origin both in its own work force and in the work forces of contractors, subcontractors, and material suppliers engaged in the performance of Federal-aid highway construction contracts.

### § 230.309 Program format.

It is essential that a standardized Federal approach be taken in assisting the States in development and implementation of EEO programs. The format set forth in Appendix A provides that standardized approach. State equal employment opportunity programs that meet or exceed the pre-

scribed standards will comply with basic FHWA requirements.

### § 230.311 State responsibilities.

(a) Each State highway agency shall prepare and submit an updated equal employment opportunity program, one year from the date of approval of the preceding program by the Federal Highway Administrator, over the signature of the head of the State highway agency, to the Federal Highway Administrator through the FHWA Division Administrator. The program shall consist of the following elements:

(1) The collection and analysis of internal employment data for its entire work force in the manner prescribed in Part II, Paragraph III of Appendix A; and

(2) The equal employment opportunity program, including the internal affirmative action plan, in the form and manner set forth in Appendix A.

(b) In preparation of the program required by § 230.311(a), the State highway agency shall consider and respond to written comments from FHWA regarding the preceding program.

### § 230.313 Approval procedure.

After reviewing the State highway agency equal employment opportunity program and the summary analysis and recommendations from the FHWA regional office, the Washington Headquarters Office of Civil Rights staff will recommend approval or disapproval of the program to the Federal Highway Administrator. The State highway agency will be advised of the Administrator's decision. Each program approval is effective for a period of one year from date of approval.

### APPENDIX A—STATE HIGHWAY AGENCY EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

Each State highway agency's (SHA) equal employment opportunity (EEO) program shall be in the format set forth herein and shall address Contractor Compliance (Part I) and SHA Internal Employment (Part II) including the organizational structure of the SHA total EEO Program (internal and external).

## PART I—CONTRACTOR COMPLIANCE

1. *Organization and structure.* A. *State-highway agency EEO Coordinator (External) and staff support.* 1. Describe the organizational location and responsibilities of the State highway agency EEO Coordinator. (Provided organization charts of the State highway agency and of the EEO staff.)

2. Indicate whether full or part-time; if part-time, indicate percentage of time devoted to EEO.

3. Indicate length of time in position, civil rights experience and training, and supervision.

4. Indicate whether compliance program is centralized or decentralized.

5. Identify EEO Coordinator's staff support (full- and part-time) by job title and indicate areas of their responsibilities.

6. Identify any other individuals in the central office having a responsibility for the implementation of this program and describe their respective roles and training received in program area.

B. *District or division personnel.* 1. Describe the responsibilities and duties of any district EEO personnel. Identify to whom they report.

2. Explain whether district EEO personnel are full-time or have other responsibilities such as labor compliance or engineering.

3. Describe training provided for personnel having EEO compliance responsibility.

C. *Project personnel.* Describe the EEO role of project personnel.

II. *Compliance procedures.* A. *Applicable directives.* 1. FHWA Contract Compliance Procedures.

2. EEO Special Provisions (FHWA Federal-Aid Highway Program Manual, Vol. 6, Chap. 4, Sec. 1, Subsec. 2, Attachment 1)<sup>1</sup>

3. Training Special Provisions (FHWA Federal-Aid Highway Program Manual, Vol. 6, Chap. 4, Sec. 1, Subsec. 2, Attachment 2)<sup>1</sup>

4. FHWA Federal-Aid Highway Program Manual, Vol. 6, Chap. 4, Sec. 1, Subsec. 6 (Contract Procedures), and Subsec. 8 (Minority Business Enterprise).<sup>1</sup>

B. *Implementation.* 1. Describe process (methods) of incorporating the above FHWA directives into the SHA compliance program.

2. Describe the methods used by the State to familiarize State compliance personnel with all FHWA contract compliance directives. Indicate frequency of work shops, training sessions, etc.

<sup>1</sup>The Federal-Aid Highway Program Manual is available for inspection and copying at the Federal Highway Administration (FHWA), 400 7th St., SW., Washington, D.C. 20590, or at FHWA offices listed in 49 CFR Part 7, Appendix D.

3. Describe the procedure for advising the contractor of the EEO contract requirements at any preconstruction conference held in connection with a Federal-aid contract.

III. *Accomplishments.* Describe accomplishments in the construction EEO compliance program during the past fiscal year.

A. *Regular project compliance review program.* This number should include at least all of the following items:

1. Number of compliance reviews conducted.

2. Number of contractors reviewed.

3. Number of contractors found in compliance.

4. Number of contractors found in non-compliance.

5. Number of show cause notices issued.

6. Number of show cause notices rescinded.

7. Number of show cause actions still under conciliation and unresolved.

8. Number of followup reviews conducted.

(NOTE—In addition to information requested in items 4-8 above, include a brief summary of total show cause and followup activities—findings and achievements.)

B. *Consolidated compliance reviews.* 1. Identify the target areas that have been reviewed since the inception of the consolidated compliance program. Briefly summarize total findings.

2. Identify any significant impact or effect of this program on contractor compliance.

C. *Home office reviews.* If the State conducts home office reviews, describe briefly the procedures followed by State.

D. *Major problems encountered.* Describe major problems encountered in connection with any review activities during the past fiscal year.

E. *Major breakthroughs.* Comment briefly on any major breakthrough or other accomplishment significant to the compliance review program.

IV. *Areawide plans/Hometown and Imposed (if applicable).* A. Provide overall analysis of the effectiveness of each areawide plan in the State.

B. Indicate by job titles the number of State personnel involved in the collection, consolidation, preparation, copying, reviewing, analysis, and transmittal of area plan reports (Contracting Activity and Post Contract Implementation). Estimate the amount of time (number of hours) spent collectively on this activity each month. How does the State use the plan report data?

C. Identify Office of Federal Contract Compliance Programs (OFCCP) area plan audits or compliance checks in which State personnel participated during the last fiscal year. On the average, how many hours have



been spent on these audits and/or checks during the past fiscal year?

D. Describe the working relationship of State EEO compliance personnel with representatives of plan administrative committee(s).

E. Provide recommendations for improving the areawide plan program and the reporting system.

V. *Contract sanctions.* A. Describe the procedures used by the State to impose contract sanctions or institute legal proceedings.

B. Indicate the State or Federal laws which are applicable.

C. Does the State withhold a contractor's progress payments for failure to comply with EEO requirements? If so, identify contractors involved in such actions during the past fiscal year. If not, identify other actions taken.

VI. *Complaints.* A. Describe the State's procedures for handling discrimination complaints against contractors.

B. If complaints are referred to a State fair employment agency or similar agency, describe the referral procedure.

C. Identify the Federal-aid highway contractors that have had discrimination complaints filed against them during the past fiscal year and provide current status.

VII. *External training programs, including supportive services.* A. Describe the State's process for reviewing the work classifications of trainees to determine that there is a proper and reasonable distribution among appropriate craft.

B. Describe the State's procedures for identifying the number of minorities and women who have completed training programs.

C. Describe the extent of participation by women in construction training programs.

D. Describe the efforts made by the State to locate and use the services of qualified minority and female supportive service consultants. Indicate if the State's supportive service contractor is a minority or female owned enterprise.

E. Describe the extent to which reports from the supportive service contractors provide sufficient data to evaluate the status of training programs, with particular reference to minorities and women.

VIII. *Minority business enterprise program.* FHPM 6-4-1-8 sets forth the FHWA policy regarding the minority business enterprise program. The implementation of this program should be explained by responding to the following:

A. Describe the method used for listing of minority contractors capable of, or interested in, highway construction contracting or subcontracting. Describe the process used to circulate names of appropriate minority firms and associations to contractors obtaining contract proposals.

B. Describe the State's procedure for ensuring that contractors take action to affirmatively solicit the interest, capability and prices of potential minority subcontractors.

C. Describe the State's procedure for ensuring that contractors have designated liaison officers to administer the minority business enterprise program in an effective manner. Specify resource material, including contracts, which the State provides to liaison officers.

D. Describe the action the State has taken to meet its goals for prequalification or censuring of minority business. Include dollar goals established for the year, and describe what criteria or formula the State has adopted for setting such goals. If it is different from the previous year, describe in detail.

E. Outline the State's procedure for evaluating its prequalification/licensing requirements.

F. Identify instances where the State has waived prequalification for subcontractors on Federal-aid construction work or prime contractors on Federal-aid contracts with an estimated dollar value lower than \$100,000.

G. Describe the State's methods of monitoring the progress and results of its minority business enterprise efforts.

IX. *Liaison.* Describe the liaison established by the State between public (State, county, and municipal) agencies and private organizations involved in EEO programs. How is the liaison maintained on a continuing basis?

X. *Innovative programs.* Identify any innovative EEO programs or management procedures initiated by the State and not previously covered.

## PART II—STATE HIGHWAY AGENCY EMPLOYMENT

I. *General.* The State highway agency (SHA) internal program is an integral part of the agency's total activities. It should include the involvement, commitment and support of executives, managers, supervisors and all other employees. For effective administration and implementation of the EEO Program, an affirmative action plan (AAP) is required. The scope of an EEO program and an AAP must be comprehensive covering all elements of the agency's personnel management policies and practices. The major part of an AAP must be recognition and removal of any barriers to equal employment opportunity, identification of problem areas and of persons unfairly excluded or held back and action enabling them to compete for jobs on an equal basis. An effective AAP not only benefits those who have been denied equal employment opportunity but will also greatly benefit the organization which often has overlooked

screened out or underutilized the great reservoir of untapped human resources and skills, especially among women and minority groups.

Set forth are general guidelines designed to assist the State highway agencies in implementing internal programs, including the development and implementation of AAP's to ensure fair and equal treatment for all persons, regardless of race, color, religion, sex or national origin in all employment practices.

**II. Administration and implementation.** The head of each State highway agency is responsible for the overall administration of the internal EEO program, including the total integration of equal opportunity into all facets of personnel management. However, specific program responsibilities should be assigned for carrying out the program at all management levels.

To ensure effectiveness in the implementation of the internal EEO program, a specific and realistic AAP should be developed. It should include both short and long-range objectives, with priorities and target dates for achieving goals and measuring progress, according to the agency's individual need to overcome existing problems.

**A. State Highway Agency Affirmative Action Officer (internal).** 1. **Appointment of Affirmative Action Officer.** The head of the SHA should appoint a qualified Affirmative Action (AA) Officer (Internal EEO Officer) with responsibility and authority to implement the internal EEO program. In making the selection, the following factors should be considered:

a. The person appointed should have proven ability to accomplish major program goals.

b. Managing the internal EEO program requires a major time commitment; it cannot be added on to an existing full-time job.

c. Appointing qualified minority and/or female employees to head or staff the program may offer good role models for present and potential employees and add credibility to the programs involved. However, the most essential requirements for such position(s) are sensitivity to varied ways in which discrimination limits job opportunities, commitment to program goals and sufficient status and ability to work with others in the agency to achieve them.

2. **Responsibilities of the Affirmative Action Officer.** The responsibilities of the AA Officer should include, but not necessarily be limited to:

a. Developing the written AAP.

b. Publicizing its content internally and externally.

c. Assisting managers and supervisors in collecting and analyzing employment data, identifying problem areas, setting goals and timetables and developing programs to

achieve goals. Programs should include specific remedies to eliminate any discriminatory practices discovered in the employment system.

d. **Handling and processing formal discrimination complaints.**

e. **Designing, implementing and monitoring internal audit and reporting systems to measure program effectiveness and to determine where progress has been made and where further action is needed.**

f. **Reporting, at least quarterly, to the head of the SHA on progress and deficiencies of each unit in relation to agency goals.**

g. **In addition, consider the creation of:**

(1) An EEO Advisory Committee, whose membership would include top management officials,

(2) An EEO Employee Committee, whose membership would include rank and file employees, with minority and female representatives from various job levels and departments to meet regularly with the AA officer, and

(3) An EEO Counseling Program to attempt informal resolution of discrimination complaints.

**B. Contents of an affirmative action plan.** The Affirmative Action Plan (AAP) is an integral part of the SHA's EEO program. Although the style and format of AAP's may vary from one SHA to another, the basic substance will generally be the same. The essence of the AAP should include, but not necessarily be limited to:

1. Inclusion of a strong agency policy statement of commitment to EEO.

2. Assignment of responsibility and authority for program to a qualified individual.

3. A survey of the labor market area in terms of population makeup, skills, and availability for employment.

4. Analyzing the present work force to identify jobs, departments and units where minorities and females are underutilized.

5. Setting specific, measurable, attainable hiring and promotion goals, with target dates, in each area of underutilization.

6. Making every manager and supervisor responsible and accountable for meeting these goals.

7. Reevaluating job descriptions and hiring criteria to assure that they reflect actual job needs.

8. Finding minorities and females who are qualified or qualifiable to fill jobs.

9. Getting minorities and females into upward mobility and relevant training programs where they have not had previous access.

10. Developing systems to monitor and measure progress regularly. If results are not satisfactory to meet goals, determine the reasons and make necessary changes.

11. Developing a procedure whereby employees and applicants may process allegations of discrimination to an impartial body without fear of reprisal.

**C. Implementation of an affirmative action plan.** The written AAP is the framework and management tool to be used at all organizational levels to actively implement, measure and evaluate program progress on the specific action items which represent EEO program problems or deficiencies. The presence of a written plan alone does not constitute an EEO program, nor is it, in itself, evidence of an ongoing program. As a minimum, the following specific actions should be taken.

1. *Issue written equal employment opportunity policy statement and affirmative action commitment.* To be effective, EEO policy provisions must be enforced by top management, and all employees must be made aware that EEO is basic agency policy. The head of the SHA (1) should issue a firm statement of personal commitment, legal obligation and the importance of EEO as an agency goal, and (2) assign specific responsibility and accountability to each executive, manager and supervisor.

The statement should include, but not necessarily be limited to, the following elements:

a. EEO for all persons, regardless of race, color, religion, sex or national origin as a fundamental agency policy.

b. Personal commitment to and support of EEO by the head of the SHA.

c. The requirement that special affirmative action be taken throughout the agency to overcome the effects of past discrimination.

d. The requirement that the EEO program be a goal setting program with measurement and evaluation factors similar to other major agency programs.

e. Equal opportunity in all employment practices, including (but not limited to) recruiting, hiring, transfers, promotions, training, compensation, benefits, recognition (awards), layoffs, and other terminations.

f. Responsibility for positive affirmative action in the discharge of EEO programs, including performance evaluations of managers and supervisors in such functions, will be expected of and shared by all management personnel.

g. Accountability for action or inaction in the area of EEO by management personnel.

2. *Publicize the affirmative action plan.* a. *Internally:* (1) Distribute written communications from the head of the SHA.

(2) Include the AAP and the EEO policy statement in agency operations manual.

(3) Hold individual meetings with managers and supervisors to discuss the program, their individual responsibilities and to review progress.

(4) Place Federal and State EEO posters on bulletin boards, near time clocks and personnel offices.

(5) Publicize the AAP in the agency newsletters and other publications.

(6) Present and discuss the AAP as a part of employee orientation and all training programs.

(7) Invite employee organization representatives to cooperate and assist in developing and implementing the AAP.

b. *Externally:* Distribute the AAP to minority groups and women's organizations, community action groups, appropriate State agencies, professional organizations, etc.

3. *Develop and implement specific programs to eliminate discriminatory barriers and achieve goals.* a. *Job structuring upward mobility:* The AAP should include specific provisions for:

(1) Periodic classification plan review to correct inaccurate position descriptions to ensure that positions are allocated to appropriate classification.

(2) Plans to ensure that all qualification requirements are closely job related.

(3) Efforts to restructure jobs and establish entry level and trainee positions to facilitate progression within occupational areas.

(4) Career counseling and guidance to employees.

(5) Creating career development plans for lower grade employees who are underutilized or who demonstrate potential for advancement.

(6) Widely publicizing upward mobility programs and opportunities within a work unit and within the total organizational structure.

b. *Recruitment and placement.* The AAP should include specific provisions for, but not necessarily limited to:

(1) Active recruitment efforts to supplement those of the central personnel agency or department, reaching all appropriate sources to obtain qualified employees on a nondiscriminatory basis.

(2) Maintaining contracts with organizations representing minority groups, women's professional societies, and other sources of candidates for technical, professional and management level positions.

(3) Ensuring that recruitment literature is relevant to all employees, including minority groups and women.

(4) Reviewing and monitoring recruitment and placement procedures so as to assure that no discriminatory practices exist.

(5) Cooperating with management and the central personnel agency on the review and validation of written tests and other selection devices.

(6) Analyzing the flow of applicants through the selection and appointment

process, including an analytical review of reasons for rejections.

(7) Monitoring the placement of employees to ensure the assignment of work and workplace on a nondiscriminatory basis.

c. *Promotions.* The AAP should include specific provisions for, but not necessarily limited to:

1. Establishing an agency-wide merit promotion program, including a merit promotion plan, to provide equal opportunity for all persons based on merit and without regard to race, color, religion, sex or national origin.

2. Monitoring the operation of the merit promotion program, including a review of promotion actions, to assure that requirements procedures and practices support EEO program objectives and do not have a discriminatory impact in actual operation.

3. Establishing skills banks to match employee skills with available job advancement opportunities.

4. Evaluating promotion criteria (supervisory evaluations, oral interviews, written tests, qualification standards, etc.) and their use by selecting officials to identify and eliminate factors which may lead to improper "selection out" of employees or applicants, particularly minorities and women, who traditionally have not had access to better jobs. It may be appropriate to require selecting officials to submit a written justification when well qualified persons are passed over for upgrading or promotion.

5. Assuring that all job vacancies are posted conspicuously and that all employees are encouraged to bid on all jobs for which they feel they are qualified.

6. Publicizing the agency merit promotion program by highlighting breakthrough promotions, i.e. advancement of minorities and women to key jobs, new career heights, etc.

d. *Training.* The AAP should include specific provisions for, but not necessarily limited to:

(1) Requiring managers and supervisors to participate in EEO seminars covering the AAP, the overall EEO program and the administration of the policies and procedures incorporated therein, and on Federal, State and local laws relating to EEO.

(2) Training in proper interviewing techniques of employees who conduct employment selection interviews.

(3) Training and education programs designed to provide opportunities for employees to advance in relation to the present and projected manpower needs of the agency and the employees' career goals.

(4) The review of profiles of training course participants to ensure that training opportunities are being offered to all eligible employees on an equal basis and to correct any inequities discovered.

e. *Layoffs, recalls, discharges, demotions, and disciplinary actions.* The standards for

deciding when a person shall be terminated, demoted, disciplined, laid off or recalled should be the same for all employees, including minorities and females. Seemingly neutral practices should be reexamined to see if they have a disparate effect on such groups. For example, if more minorities and females are being laid off because they were the last hired, then, adjustments should be made to assure that the minority and female ratios do not decrease because of these actions.

(1) When employees, particularly minorities and females, are disciplined, laid off, discharged or downgraded, it is advisable that the actions be reviewed by the AA Officer before they become final.

(2) Any punitive action (i.e. harassment, terminations, demotions), taken as a result of employees filing discrimination complaints, is illegal.

(3) The following records should be kept to monitor this area of the internal EEO program:

On all terminations, including layoffs and discharges: indicate total number, name, (home address and phone number), employment date, termination date, recall rights, sex, racial/ethnic identification (by job category), type of termination and reason for termination.

On all demotions: indicate total number, name, (home address and phone number), demotion date, sex, racial/ethnic identification (by job category), and reason for demotion.

On all recalls: indicate total number, name, (home address and phone number) recall date, sex, and racial/ethnic identification (by job category).

Exit interviews should be conducted with employees who leave the employment of the SHA.

f. *Other personnel actions.* The AAP should include specific provisions for, but not necessarily limited to:

(1) Assuring that information on EEO counseling and grievance procedures is easily available to all employees.

(2) A system for processing complaints alleging discrimination because of race, color, religion, sex or national origin to an impartial body.

(3) A system for processing grievances and appeals (i.e. disciplinary actions, adverse actions, adverse action appeals, etc).

(4) Including in the performance appraisal system a factor to rate manager's and supervisors' performance in discharging the EEO program responsibilities assigned to them.

(5) Reviewing and monitoring the performance appraisal program periodically to determine its objectivity and effectiveness.

(6) Ensuring the equal availability of employee benefits to all employees.

**4. Program evaluation.** An internal reporting system to continually audit, monitor and evaluate programs is essential for a successful AAP. Therefore, a system providing for EEO goals, timetables, and periodic evaluations needs to be established and implemented. Consideration should be given to the following actions:

a. Defining the major objectives of EEO program evaluation.

b. The evaluation should be directed toward results accomplished, not only at efforts made.

c. The evaluation should focus attention on assessing the adequacy of problem identification in the AAP and the extent to which the specific action steps in the plan provide solutions.

d. The AAP should be reviewed and evaluated at least annually. The review and evaluation procedures should include, but not be limited to, the following:

(1) Each bureau, division or other major component of the agency should make annual and such other periodic reports as are needed to provide an accurate review of the operations of the AAP in that component.

(2) The AA Officer should make an annual report to the head of the SHA, containing the overall status of the program, results achieved toward established objectives, identity of any particular problems encountered and recommendations for corrective actions needed.

e. Specific, numerical goals and objectives should be established for the ensuing year. Goals should be developed for the SHA as a whole, as well as for each unit and each category.

**III. Employment statistical data.** A. At a minimum, furnish the most recent data in the following:

1. The total population in the State,

2. The total labor market in State, with breakdown by racial/ethnic identification and sex, and

3. An analysis of (1) and (2) above, in connection with the availability of personnel and jobs within SHA's.

B. State highway agencies shall use EEO-4 Form in providing current workforce data. This data shall reflect only State department of transportation/State highway department employment.

| D. EMPLOYMENT DATA AS OF JUNE 30<br>(Do not include elected/appointed officials. Blanks will be counted as zero) |                                         |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|------------------------------------------------------------------------------------------------------------------|-----------------------------------------|--------------------------------|------------------------|------------|---------------|-----------------------------------------|----------------------------------------------------|------------------------|------------|---------------|-----------------------------------------|----------------------------------------------------|
| 1. FULL TIME EMPLOYEES (Temporary employees not included)                                                        |                                         |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
| FPM<br>CATEGORIES                                                                                                | ANNUAL<br>SALARY<br>in Thousands<br>000 | TOTAL<br>(COLUMNS<br>B-K)<br>A | MALE                   |            |               |                                         |                                                    | FEMALE                 |            |               |                                         |                                                    |
|                                                                                                                  |                                         |                                | NON-HISPANIC<br>ORIGIN |            | HISPANIC<br>D | ASIAN<br>OR<br>PACIFIC<br>ISLANDER<br>E | AMERICAN<br>INDIAN<br>OR<br>ALASKAN<br>NATIVE<br>F | NON-HISPANIC<br>ORIGIN |            | HISPANIC<br>I | ASIAN<br>OR<br>PACIFIC<br>ISLANDER<br>J | AMERICAN<br>INDIAN<br>OR<br>ALASKAN<br>NATIVE<br>K |
|                                                                                                                  |                                         |                                | WHITE<br>B             | BLACK<br>C |               |                                         |                                                    | WHITE<br>G             | BLACK<br>H |               |                                         |                                                    |
| GENERAL<br>ADMINISTRATIVE                                                                                        | 1 0 1 3 9                               |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 2 4 0 5 9                               |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 3 6 0 7 9                               |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 4 8 0 9 9                               |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 5 10 0 12 9                             |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 6 13 0 15 9                             |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 7 16 0 24 9                             |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 8 25 0 PLUS                             |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
| PROFESSIONALS                                                                                                    | 9 0 1 3 9                               |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 10 4 0 5 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 11 6 0 7 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 12 8 0 9 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 13 10 0 12 9                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 14 13 0 15 9                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 15 16 0 24 9                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 16 25 0 PLUS                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
| TECHNICIAN                                                                                                       | 17 0 1 3 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 18 4 0 5 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 19 6 0 7 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 20 8 0 9 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 21 10 0 12 9                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 22 13 0 15 9                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 23 16 0 24 9                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 24 25 0 PLUS                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
| PUBLIC<br>SERVICE                                                                                                | 25 0 1 3 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 26 4 0 5 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 27 6 0 7 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 28 8 0 9 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 29 10 0 12 9                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 30 13 0 15 9                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 31 16 0 24 9                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 32 25 0 PLUS                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
| OTHER<br>PROFESSIONALS                                                                                           | 33 0 1 3 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 34 4 0 5 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 35 6 0 7 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 36 8 0 9 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 37 10 0 12 9                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 38 13 0 15 9                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 39 16 0 24 9                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 40 25 0 PLUS                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
| OFFICIAL<br>CIVIL                                                                                                | 41 0 1 3 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 42 4 0 5 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 43 6 0 7 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 44 8 0 9 9                              |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 45 10 0 12 9                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 46 13 0 15 9                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 47 16 0 24 9                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |
|                                                                                                                  | 48 25 0 PLUS                            |                                |                        |            |               |                                         |                                                    |                        |            |               |                                         |                                                    |

DOT FORM 164 APR. 76

| D. EMPLOYMENT DATA AS OF JUNE 30 (Cont.)<br>(Do not include elected/appointed officials. Blanks will be counted as zero) |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
|--------------------------------------------------------------------------------------------------------------------------|-------------------------------------|------------------------------|---------------------|------------|---------------|--------------------------------------|-------------------------------------------------|---------------------|------------|---------------|--------------------------------------|--|--------------------|
| 1. FULL TIME EMPLOYEES (Temporary employees not included)                                                                |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| JOB CATEGORIES                                                                                                           | ANNUAL SALARY<br>(in thousands 000) | TOTAL<br>(COLUMN B & C)<br>A | MALE                |            |               |                                      |                                                 | FEMALE              |            |               |                                      |  | AN<br>P<br>AL<br>N |
|                                                                                                                          |                                     |                              | NON-HISPANIC ORIGIN |            | HISPANIC<br>D | ASIAN OR<br>PACIFIC<br>ISLANDER<br>E | AMERICAN<br>INDIAN OR<br>ALASKAN<br>NATIVE<br>F | NON-HISPANIC ORIGIN |            | HISPANIC<br>I | ASIAN OR<br>PACIFIC<br>ISLANDER<br>J |  |                    |
|                                                                                                                          |                                     |                              | WHITE<br>B          | BLACK<br>C |               |                                      |                                                 | WHITE<br>G          | BLACK<br>H |               |                                      |  |                    |
| SKILLED CRAFT                                                                                                            | 49 \$ 0-1.39                        |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
|                                                                                                                          | 50 4-0.59                           |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
|                                                                                                                          | 51 6-0.79                           |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
|                                                                                                                          | 52 8-0.99                           |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
|                                                                                                                          | 53 10-0-12.9                        |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
|                                                                                                                          | 54 13-0-15.9                        |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
|                                                                                                                          | 55 16-0-24.9                        |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
|                                                                                                                          | 56 25.0 PLUS                        |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| SERVICE/<br>MAINTENANCE                                                                                                  | 57 0-1.39                           |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
|                                                                                                                          | 58 4-0.59                           |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
|                                                                                                                          | 59 6-0.79                           |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
|                                                                                                                          | 60 8-0.99                           |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
|                                                                                                                          | 61 10-0-12.9                        |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
|                                                                                                                          | 62 13-0-15.9                        |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
|                                                                                                                          | 63 16-0-24.9                        |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
|                                                                                                                          | 64 \$ 25.0 PLUS                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 65. TOTAL FULL TIME                                                                                                      |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| (LINES 1-64)                                                                                                             |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 2. OTHER THAN FULL TIME EMPLOYEES (Include temporary employees)                                                          |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 66. OFFICIALS / ADMIN.                                                                                                   |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 67. PROFESSIONALS                                                                                                        |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 68. TECHNICIANS                                                                                                          |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 69. PROTECTIVE SERV.                                                                                                     |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 70. PARA-PROFESSIONAL                                                                                                    |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 71. OFFICE / CLERICAL                                                                                                    |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 72. SKILLED CRAFT                                                                                                        |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 73. SERV. / MAINT.                                                                                                       |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 74. TOTAL OTHER THAN FULL TIME                                                                                           |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| (LINES 66-73)                                                                                                            |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 3. NEW HIRES DURING FISCAL YEAR Permanent full time only<br>JULY 1 - JUNE 30                                             |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 75. OFFICIALS / ADMIN.                                                                                                   |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 76. PROFESSIONALS                                                                                                        |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 77. TECHNICIANS                                                                                                          |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 78. PROTECTIVE SERV.                                                                                                     |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 79. PARA-PROFESSIONAL                                                                                                    |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 80. OFFICE / CLERICAL                                                                                                    |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 81. SKILLED CRAFT                                                                                                        |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 82. SERV. / MAINT.                                                                                                       |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| 83. TOTAL NEW HIRES                                                                                                      |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |
| (LINES 75-82)                                                                                                            |                                     |                              |                     |            |               |                                      |                                                 |                     |            |               |                                      |  |                    |

[41 FR 28270, July 9, 1976, as amended at 41 FR 46294, Oct. 20, 1976]

## Subpart D—Construction Contract Equal Opportunity Compliance Procedures

**AUTHORITY:** 23 U.S.C. 140(a), 315; E.O. 11246; 41 CFR 60-1; 49 CFR 1.48.

**SOURCE:** 41 FR 34239, Aug. 13, 1976, unless otherwise noted.

### § 230.401 Purpose.

The purpose of the regulations in this subpart is to prescribe policies and procedures to standardize the implementation of the equal opportunity contract compliance program, including compliance reviews, consolidated compliance reviews, and the administration of areawide plans.

### § 230.403 Applicability.

The procedures set forth hereinafter apply to all nonexempt direct Federal and Federal-aid highway construction contracts and subcontracts, unless otherwise specified.

### § 230.405 Administrative responsibilities.

(a) *Federal Highway Administration (FHWA) responsibilities.* (1) The FHWA has the responsibility to ensure that contractors meet contractual equal opportunity requirements under E.O. 11246, as amended, and Title 23, United States Code, and to provide guidance and direction to States in the development and implementation of a program to assure compliance with equal opportunity requirements.

(2) The Federal Highway Administrator or a designee may inquire into the status of any matter affecting the FHWA equal opportunity program and, when considered necessary, assume jurisdiction over the matter, proceeding in coordination with the State concerned. This is without derogation of the authority of the Secretary of Transportation, Department of Transportation (DOT), the Director, DOT Departmental Office of Civil Rights (OCR) or the Director, Office of Federal Contract Compliance Programs (OFCCP), Department of Labor.

(3) Failure of the State highway agency (SHA) to discharge the responsibilities stated in § 230.405(b)(1) may result in DOT's taking any or all of

the following actions (see Appendix A to 23 CFR Part 630, Subpart C "Federal-aid project agreement"):

(i) Cancel, terminate, or suspend the Federal-aid project agreement in whole or in part;

(ii) Refrain from extending any further assistance to the SHA under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the SHA; and

(iii) Refer the case to an appropriate Federal agency for legal proceedings.

(4) Action by the DOT, with respect to noncompliant contractors, shall not relieve a SHA of its responsibilities in connection with these same matters; nor is such action by DOT a substitute for corrective action utilized by a State under applicable State laws or regulations.

(b) *State responsibilities.* (1) The SHA's, as contracting agencies, have a responsibility to assure compliance by contractors with the requirements of Federal-aid construction contracts, including the equal opportunity requirements, and to assist in and cooperate with FHWA programs to assure equal opportunity.

(2) The corrective action procedures outlined herein do not preclude normal contract administration procedures by the States to ensure the contractor's completion of specific contract equal opportunity requirements, as long as such procedures support, and sustain the objectives of E.O. 11246, as amended. The State shall inform FHWA of any actions taken against a contractor under normal State contract administration procedures, if that action is precipitated in whole or in part by noncompliance with equal opportunity contract requirements.

### § 230.407 Definitions.

For the purpose of this subpart, the following definitions shall apply, unless the context requires otherwise:

(a) "Actions," identified by letter and number, shall refer to those items identified in the process flow chart. (Appendix D);



(b) "Affirmative Action Plan" means a written positive management tool of a total equal opportunity program indicating the action steps for all organizational levels of a contractor to initiate and measure equal opportunity program progress and effectiveness. (The Special Provisions [23 CFR 230 A, Appendix A] and areawide plans are Affirmative Action Plans.);

(c) "Affirmative Actions" means the efforts exerted towards achieving equal opportunity through positive, aggressive, and continuous result-oriented measures to correct past and present discriminatory practices and their effects on the conditions and privileges of employment. These measures include, but are not limited to, recruitment, hiring, promotion, upgrading, demotion, transfer, termination, compensation, and training;

(d) "Areawide Plan" means an Affirmative Action Plan approved by the Department of Labor to increase minority and female utilization in crafts of the construction industry in a specified geographical area pursuant to E.O. 11246, as amended, and taking the form of either a "Hometown" or an "Imposed" Plan.

(1) "Hometown Plan" means a voluntary areawide agreement usually developed by representatives of labor unions, minority organizations, and contractors, and approved by the OFCCP for the purpose of implementing the equal employment opportunity requirements pursuant to E.O. 11246, as amended;

(2) "Imposed Plan" means mandatory affirmative action requirements for a specified geographical area issued by OFCCP and, in some areas, by the courts;

(e) "Compliance Specialist" means a Federal or State employee regularly employed and experienced in civil rights policies, practices, procedures, and equal opportunity compliance review and evaluation functions;

(f) "Consolidated Compliance Review" means a review and evaluation of all significant construction employment in a specific geographical (target) area;

(g) "Construction" shall have the meanings set forth in 41 CFR 60-1.3(e) and 23 U.S.C. 101(a). References in

both definitions to expenses or functions incidental to construction shall include preliminary engineering work in project development or engineering services performed by or for a SHA;

(h) "Corrective Action Plan" means a contractor's unequivocal written signed commitment outlining action taken or proposed, with time limits and goals, where appropriate to correct, compensate for, and remedy a violation of the equal opportunity requirements as specified in a list of deficiencies. (Sometimes called a conciliation agreement or a letter of commitment.);

(i) "Contractor" means, any person, corporation, partnership, or unincorporated association that holds a FHWA direct or federally assisted construction contract or subcontract regardless of tier;

(j) "Days" shall mean calendar days;

(k) "Discrimination" means a distinction in treatment based on race, color, religion, sex, or national origin;

(l) "Equal Employment Opportunity" means the absence of partiality or distinction in employment treatment so that the right of all persons to work and advance on the basis of merit, ability, and potential is maintained;

(m) "Equal Opportunity Compliance Review" means an evaluation and determination of a nonexempt direct Federal or Federal-aid contractor's subcontractor's compliance with equal opportunity requirements based on:

(1) Project work force—employees at the physical location of the construction activity;

(2) Area work force—employees at all Federal-aid, Federal, and non-Federal projects in a specific geographic area as determined under § 230.407(b)(9); or

(3) Home office work force—employees at the physical location of the corporate, company, or other ownership headquarters or regional managerial offices, including "white collar" personnel (managers, professionals, technicians, and clericals) and any maintenance or service personnel connected thereto;

(n) "Equal Opportunity Requirements" is a general term used throughout this document to mean all contract provisions relative to equal

employment opportunity (EEO), sub-contracting, and training;

(o) "Good Faith Effort" means affirmative action measures designed to implement the established objectives of an Affirmative Action Plan;

(p) "Show Cause Notice" means a written notification to a contractor based on the determination of the reviewer (or in appropriate cases by higher level authority) to be in non-compliance with the equal opportunity requirements. The notice informs the contractor of the specific basis for the determination and provides the opportunity, within 30 days from receipt, to present an explanation why sanctions should not be imposed;

(q) "State highway agency" (SHA) means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" should be considered equivalent to "State highway agency." With regard to direct Federal contracts, references herein to SHA's shall be considered to refer to FHWA regional offices, as appropriate.

#### 230.409 Contract compliance review procedures.

(a) *General.* A compliance review consists of the following elements:

- (1) Review Scheduling (Actions R-1 and R-2).
- (2) Contractor Notification (Action R-3).
- (3) Preliminary Analysis (Phase I) (Action R-4).
- (4) Onsite Verification and Interviews (Phase II) (Action R-5).
- (5) Exit Conference (Action R-6).
- (6) Compliance Determination and Formal Notification (Actions R-8, R-9, R-10, R-11, R-12).

The compliance review procedure, as described herein and in Appendix D provides for continual monitoring of the employment process. Monitoring officials at all levels shall analyze submissions from field offices to ensure proper completion of procedural requirements and to ascertain the effectiveness of program implementation.

(b) *Review scheduling.* (Actions R-1 and R-2). Because construction work areas are not constant, particular attention should be paid to the proper

scheduling of equal opportunity compliance reviews. Priority in scheduling equal opportunity compliance reviews shall be given to reviewing those contractor's work forces:

(1) Which hold the greatest potential for employment and promotion of minorities and women (particularly in higher skilled crafts or occupations);

(2) Working in areas which have significant minority and female labor forces within a reasonable recruitment area;

(3) Working on projects that include special training provisions; and

(4) Where compliance with equal opportunity requirements is questionable. (Based on previous PR-1391's (23 CFR Part 230, Subpart A, Appendix C) Review Reports and Hometown Plan Reports).

In addition, the following considerations shall apply:

(5) Reviews specifically requested by the Washington Headquarters shall receive priority scheduling;

(6) Compliance Reviews in geographical areas covered by areawide plans would normally be reviewed under the Consolidated Compliance Review Procedures set forth in § 230.415.

(7) Reviews shall be conducted prior to or during peak employment periods.

(8) No compliance review shall be conducted that is based on a home office work force of less than 15 employees unless requested or approved by Washington Headquarters; and

(9) For compliance reviews based on an area work force (outside of areawide plan coverage), the Compliance Specialist shall define the applicable geographical area by considering:

- (i) Union geographical boundaries;
- (ii) The geographical area from which the contractor recruits employees, i.e. reasonable recruitment area;
- (iii) Standard Metropolitan Statistical Area (SMSA) or census tracts; and
- (iv) The county in which the Federal or Federal-aid project(s) is located and adjacent counties.

(c) *Contractor notification* (Action R-3). (1) The Compliance Specialist should usually provide written notification to the contractor of the pend-

ing compliance review at least 2 weeks prior to the onsite verification and interviews. This notification shall include the scheduled date(s), an outline of the mechanics and basis of the review, requisite interviews, and documents required.

(2) The contractor shall be requested to provide a meeting place on the day of the visit either at the local office of the contractor or at the job-site.

(3) The contractor shall be requested to supply all of the following information to the Compliance Specialist prior to the onsite verification and interviews.

(i) Current Form PR-1391 developed from the most recent payroll;

(ii) Copies of all current bargaining agreements;

(iii) Copies of purchase orders and subcontracts containing the EEO clause;

(iv) A list of recruitment sources available and utilized;

(v) A statement of the status of any action pertaining to employment practices taken by the Equal Employment Opportunity Commission (EEOC) or other Federal, State, or local agency regarding the contractor or any source of employees;

(vi) A list of promotions made during the past 6 months, to include race, national origin, and sex of employee, previous job held, job promoted into; and corresponding wage rates;

(vii) An annotated payroll to show job classification, race, national origin and sex;

(viii) A list of minority- or female-owned companies contacted as possible subcontractors, vendors, material suppliers, etc.; and

(ix) Any other necessary documents or statements requested by the Compliance Specialist for review prior to the actual onsite visit.

(4) For a project review, the prime contractor shall be held responsible for ensuring that all active subcontractors are present at the meeting and have supplied the documentation listed in § 230.409(c)(3).

(d) *Preliminary analysis (Phase I) (Action R-4).* Before the onsite verification and interviews, the Compliance Specialist shall analyze the employ-

ment patterns, policies, practices, programs of the contractor to determine whether or not problems exist reviewing information relative to:

(1) The contractor's current workforce;

(2) The contractor's relation with referral sources, e.g., unions, employment agencies, community agencies, minority and female organizations, etc.;

(3) The minority and female representation of sources;

(4) The availability of minorities, females with requisite skills in a reasonable recruitment area;

(5) Any pending EEOC or Department of Justice cases or local or Fair Employment Agency cases which are relevant to the contractor and the referral sources; and

(6) The related projects (and/or contractor) files of FHWA regional division and State Coordinator's office to obtain current information relative to the status of the contract project(s), value, scheduled duration, written corrective action plans, 1391 or Manpower Utilization Report training requirements, previous compliance reviews, and other pertinent correspondence and/or reports.

(e) *Onsite verification and interviews (Phase II) (Action R-5).* Phase II of the review consists of construction or home office visit(s). During the initial meeting with the contractor, the following topics shall be discussed:

(i) Objectives of the visit;

(ii) The material submitted by the contractor, including the actual implementation of the employee referral source system and any discrepancies found in the material; and

(iii) Arrangements for the tour(s) and employee interviews.

(2) The Compliance Specialist shall make a physical tour of the employment site(s) to determine that:

(i) EEO posters are displayed in conspicuous places in a legible fashion;

(ii) Facilities are provided on a non-segregated basis (e.g. work areas, washroom, timeclocks, locker room, storage areas, parking lots, and drinking fountains);

(iii) Supervisory personnel have been oriented to the contractor's EEO commitments;

(iv) The employee referral source system is being implemented;

(v) Reported employment data is accurate;

(vi) Meetings have been held with employees to discuss EEO policy, particularly new employees; and

(vii) Employees are aware of their right to file complaints of discrimination.

(3) The Compliance Specialist should interview at least one minority, one nonminority, and one woman in each trade, classification, or occupation. The contractor's superintendent or home office manager should also be interviewed.

(4) The Compliance Specialist shall, on a sample basis, determine the union membership status of union employees at the site (e.g. whether they have permits, membership cards, or books, and in what category they are classified (e.g., A, B, or C)).

(5) The Compliance Specialist shall also determine the method utilized to place employees on the job and whether equal opportunity requirements have been followed.

(6) The Compliance Specialist shall determine, and the report shall indicate the following:

(i) Is there reasonable representation and utilization of minorities and women in each craft, classification or occupation? If not, what has the contractor done to increase recruitment, hiring, upgrading, and training of minorities and women?

(ii) What action is the contractor taking to meet the contractual requirement to provide equal employment opportunity?

(iii) Are the actions taken by the contractor acceptable? Could they reasonably be expected to result in increased utilization of minorities and women?

(iv) Is there impartiality in treatment of minorities and women?

(v) Are affirmative action measures an isolated nature or are they continuing?

(vi) Have the contractor's efforts produced results?

(f) *Exit conference (Action R-6).* (1) During the exit conference with the contractor, the following topics shall be discussed:

(i) Any preliminary findings that, if not corrected immediately or not corrected by the adoption of an acceptable voluntary corrective action plan, would necessitate a determination of noncompliance;

(ii) The process and time in which the contractor shall be informed of the final determination (15 days following the onsite verification and interviews); and

(iii) Any other matters that would best be resolved before concluding the onsite portion of the review.

(2) Voluntary corrective action plans may be negotiated at the exit conference, so that within 15 days following the exit portion of the review, the Compliance Specialist shall prepare the review report and make a determination of either:

(i) Compliance, and so notify the contractor; or

(ii) Noncompliance, and issue a 30-day show cause notice.

The acceptance of a voluntary corrective action plan at the exit conference does not preclude a determination of noncompliance, particularly if deficiencies not addressed by the plan are uncovered during the final analysis and report writing. (Action R-7) A voluntary corrective action plan should be accepted with the understanding that it only address those problems uncovered prior to the exit conference.

(g) *Compliance determinations (Action R-8).* (1) The evidence obtained at the compliance review shall constitute a sufficient basis for an objective determination by the Compliance Specialist conducting the review of the contractor's compliance or noncompliance with contractual provisions pursuant to E.O. 11246, as amended, and FHWA EEO Special Provisions implementing the Federal-Aid Highway Act of 1968, where applicable.

(2) Compliance determinations on contractors working in a Hometown Plan Area shall reflect the status of those crafts covered by Part II of the plan bid conditions. Findings regard-

ing Part I crafts shall be transmitted through channels to the Washington Headquarters, Office of Civil Rights.

(3) The compliance status of the contractor will usually be reflected by positive efforts in the following areas:

(i) The contractor's equal employment opportunity (EEO) policy;

(ii) Dissemination of the policy and education of supervisory employees concerning their responsibilities in implementing the EEO policy;

(iii) The authority and responsibilities of the EEO officer;

(iv) The contractor's recruitment activities, especially establishing minority and female recruitment and referral procedures;

(v) The extent of participation and minority and female utilization in FHWA training programs;

(vi) The contractor's review of personnel actions to ensure equal opportunities;

(vii) The contractor's participation in apprenticeship or other training;

(viii) The contractor's relationship (if any) with unions and minority and female union membership;

(ix) Effective measures to assure nonsegregated facilities, as required by contract provisions;

(x) The contractor's procedures for monitoring subcontractors and utilization of minority and female subcontractors and/or subcontractors with substantial minority and female employment; and

(xi) The adequacy of the contractor's records and reports.

(4) A contractor shall be considered to be in compliance (Action R-9) when the equal opportunity requirements have been effectively implemented, or there is evidence that every good faith effort has been made toward achieving this end. Efforts to achieve this goal shall be result-oriented, initiated and maintained in good faith, and emphasized as any other vital management function.

(5) A contractor shall be considered to be in noncompliance (Action R-10) when:

(i) The contractor has discriminated against applicants or employees with respect to the conditions or privileges of employment; or

(ii) The contractor fails to provide evidence of every good faith effort to provide equal opportunity.

(h) *Show cause procedures*—(1) *General*. Once the onsite verification exit conference (Action R-5) has been completed and a compliance termination made, (Action R-8), the contractor shall be notified in writing of the compliance determination (Action R-11 or R-12). This written notification shall be sent to the contractor within 15 days following the completion of the onsite verification exit conference. If a contractor is found in noncompliance (Action R-10), action efforts to bring the contractor into compliance shall be initiated through the issuance of a show cause notice (Action R-12). The notice shall advise the contractor to show cause within 30 days why sanctions should not be imposed.

(2) *When a show cause notice is required*. A show cause notice shall be issued when a determination of noncompliance is made based upon:

(i) The findings of a compliance review;

(ii) The results of an investigation which verifies the existence of discrimination; or

(iii) Areawide plan reports that show an underutilization of minority (based on criteria of U.S. Department of Labor's Optional Form 66 "Minority Power Utilization Report") throughout the contractor's work force covered by Part II of the plan bid conditions.

(3) *Responsibility for issuance*. Show cause notices will normally be issued by SHA's to federally assisted contractors when the State has made a determination of noncompliance, when FHWA has made such a determination and has requested the State to issue the notice.

(ii) When circumstances warrant, the Regional Federal Highway Administrator or a designee may exercise primary compliance responsibility by issuing the notice directly to the contractor.

(iii) The Regional Federal Highway Administrators in Regions 8, 10, and 11, and the Regional Engineer in Region 12, shall issue show cause notices to direct

Federal contractors found in noncompliance.

(4) *Content of show cause notice.* The show cause notice must: (See sample—Appendix A of this subpart)

(i) Notify the contractor of the determination of noncompliance;

(ii) Provide the basis for the determination of noncompliance;

(iii) Notify the contractor of the obligation to show cause within 30 days why formal proceedings should not be instituted;

(iv) Schedule (date, time, and place) a compliance conference to be held approximately 15 days from the contractor's receipt of the notice;

(v) Advise the contractor that the conference will be held to receive and discuss the acceptability of any proposed corrective action plan and/or correction of deficiencies; and

(vi) Advise the contractor of the availability and willingness of the Compliance Specialist to conciliate within the time limits of the show cause notice.

(5) *Preparing and processing the show cause notice.* (i) The State or FHWA official who conducted the investigation or review shall develop complete background data for the issuance of the show cause notice and submit the recommendation to the head of the SHA or the Regional Federal Highway Administrator, as appropriate.

(ii) The recommendation, background data, and final draft notice shall be reviewed by appropriate State or FHWA legal counsel.

(iii) Show cause notices issued by the SHA shall be issued by the head of that agency or a designee.

(iv) The notice shall be personally served to the contractor or delivered by certified mail, return receipt requested, with a certificate of service or the return receipt filed with the case record.

(v) The date of the contractor's receipt of the show cause notice shall begin the 30-day show cause period. (Action R-13).

(vi) The 30-day show cause notice shall be issued directly to the noncompliant contractor or subcontractor with an informational copy sent to any concerned prime contractors.

(6) *Conciliation efforts during show cause period.* (i) The Compliance Specialist is required to attempt conciliation with the contractor throughout the show cause time period. Conciliation and negotiation efforts shall be directed toward correcting contractor program deficiencies and initiating corrective action which will maintain and assure equal opportunity. Records shall be maintained in the State, FHWA division, or FHWA regional office's case files, as appropriate, indicating actions and reactions of the contractor, a brief synopsis of any meetings with the contractor, notes on verbal communication and written correspondence, requests for assistance or interpretations, and other relevant matters.

(ii) In instances where a contractor is determined to be in compliance after a show cause notice has been issued, the show cause notice will be rescinded and the contractor formally notified (Action R-17). The FHWA Washington Headquarters, Office of Civil Rights, shall immediately be notified of any change in status.

(7) *Corrective action plans.* (i) When a contractor is required to show cause and the deficiencies cannot be corrected within the 30-day show cause period, a written corrective action plan may be accepted. The written corrective action plan shall specify clear unequivocal action by the contractor with time limits for completion. Token actions to correct cited deficiencies will not be accepted. (See Sample Corrective Action Plan—Appendix B of this subpart)

(ii) When a contractor submits an acceptable written corrective action plan, the contractor shall be considered in compliance during the plan's effective implementation and submission of required progress reports. (Action R-15 and R-17).

(iii) When an acceptable corrective action plan is not agreed upon and the contractor does not otherwise show cause as required, the formal hearing process shall be recommended through appropriate channels by the compliance specialist immediately upon expiration of the 30-day show cause period. (Action R-16, R-18, R-19)

(iv) When a contractor, after having submitted an acceptable corrective action plan and being determined in compliance is subsequently determined to be in noncompliance based upon the contractor's failure to implement the corrective action plan, the formal hearing process must be recommended immediately. There are no provisions for reinstituting a show cause notice.

(v) When, however, a contractor operating under an acceptable corrective action plan carries out the provisions of the corrective action plan but the actions do not result in the necessary changes, the corrective action plan shall be immediately amended through negotiations. If, at this point, the contractor refuses to appropriately amend the corrective action plan, the formal hearing process shall be recommended immediately.

(vi) A contractor operating under an approved voluntary corrective action plan (i.e. plan entered into prior to the issuance of a show cause) must be issued a 30-day show cause notice in the situations referred to in paragraphs (h) (7) (iv) and (v) of this section, i.e., failure to implement an approved corrective action plan or failure of corrective actions to result in necessary changes.

(1) *Followup reviews.* (1) A followup review is an extension of the initial review process to verify the contractors performance of corrective action and to validate progress report information. Therefore, followup reviews shall only be conducted of those contractors where the initial review resulted in a finding of noncompliance and a show cause notice was issued.

(2) Followup reviews shall be reported as a narrative summary referencing the initial review report.

(j) *Hearing process.* (1) When such procedures as show cause issuance and conciliation conferences have been unsuccessful in bringing contractors into compliance within the prescribed 30 days, the reviewer (or other appropriate level) shall immediately recommend, through channels, that the Department of Transportation obtain approval from the Office of Federal Contract Compliance Programs for a formal hearing (Action R-19). The

Contractor should be notified of action.

(2) Recommendations to the Federal Highway Administrator for his approval shall be accompanied by reports of findings and case files containing any related correspondence. The following items shall be included with the recommendation:

(i) Copies of all Federal and Federal aid contracts and/or subcontracts which the contractor is party;

(ii) Copies of any contractor or contractor certifications;

(iii) Copy of show cause notice;

(iv) Copies of any corrective action plans; and

(v) Copies of all pertinent Management Utilization Reports, if applicable.

(3) SHA's through FHWA regional and division offices, will be advised of decisions and directions affecting contractors by the FHWA Washington Headquarters, Office of Civil Rights for the Department of Transportation.

(k) *Responsibility determination.*

(1) In instances where request for formal hearings are pending OFC approval, the contractor may be declared a nonresponsible contractor for inability to comply with the equal opportunity requirements.

(2) SHA's shall refrain from entering into any contract or contract modification subject to E.O. 11246, as amended with a contractor who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to E.O. 11246, as amended.

§ 230.411 Guidance for conducting reviews.

(a) *Extensions of time.* Reasonable extensions of time limits set forth in these instructions may be authorized by the SHA's or the FHWA regional office, as appropriate. However, all extensions are subject to Washington Headquarters approval and shall only be granted with this understanding. The Federal Highway Administrator shall be notified of all time extensions granted and the justification therefor. In sensitive or special interest cases, simultaneous transmittal of reports and other pertinent documents is authorized.

(b) *Contract completion.* Completion of a contract or seasonal shutdown shall not preclude completion of the administrative procedures outlined herein or the possible imposition of sanctions or debarment.

(c) *Home office reviews outside regions.* When contractor's home offices are located outside the FHWA region in which the particular contract is being performed, and it is determined that the contractors' home offices should be reviewed, requests for such reviews with accompanying justification shall be forwarded through appropriate channels to the Washington Headquarters, Office of Civil Rights. After approval, the Washington Headquarters, Office of Civil Rights, (OCR) shall request the appropriate region to conduct the home office review.

(d) *Employment of women.* Executive Order 11246, as amended, implementing rules and regulations regarding sex discrimination are outlined in 41 CFR Part 60-20. It is the responsibility of the Compliance Specialist to ensure that contractors provide women full participation in their work force.

(e) *Effect of exclusive referral agreements.* (1) The OFCCP has established the following criteria for determining compliance when an exclusive referral agreement is involved;

(i) It shall be no excuse that the union, with which the contractor has a collective bargaining agreement providing for exclusive referral, failed to refer minority or female employees.

(ii) Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964, as amended.

(iii) Contractors and subcontractors have a responsibility to provide equal opportunity if they want to participate in federally involved contracts. To the extent they have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their obligations, these contractors must be found in noncompliance.

(2) If the contractor indicates that union action or inaction is a proximate cause of the contractor's failure to provide equal opportunity, a finding of noncompliance will be made and a show cause notice issued, and:

(i) The contractor will be formally directed to comply with the equal opportunity requirements.

(ii) Reviews of other contractors with projects within the jurisdiction of the applicable union locals shall be scheduled.

(iii) If the reviews indicate a pattern and/or practice of discrimination on the part of specific union locals, each contractor in the area shall be informed of the criteria outlined in § 230.411(e)(1) of this section. Furthermore, the FHWA Washington Headquarters, OCR, shall be provided with full documentary evidence to support the discriminatory pattern indicated.

(iv) In the event the union referral practices prevent the contractor from meeting the equal opportunity requirements pursuant to the E.O. 11246, as amended, such contractor shall immediately notify the SHA.

#### § 230.413 Review reports.

(a) *General.* (1) The Compliance Specialist shall maintain detailed notes from the beginning of the review from which a comprehensive compliance review report can be developed.

(2) The completed compliance review report shall contain documentary evidence to support the determination of a contractor's or subcontractor's compliance status.

(3) Findings, conclusions, and recommendations shall be explicitly stated and, when necessary, supported by documentary evidence.

(4) The compliance review report shall contain at least the following information.<sup>1</sup> (Action R-20)

(i) Complete name and address of contractor.

(ii) Project(s) identification.

(iii) Basis for the review, i.e. area work force, project work force, home

<sup>1</sup>The Federal Highway Administration will accept completed Form FHWA-86 for the purpose. The form is available at the offices listed in 49 CFR Part 7, Appendix D.



office work force, and target area work force.

(iv) Identification of Federal or Federal-aid contract(s).

(v) Date of review.

(vi) Employment data by job craft, classification, or occupation by race and sex in accordance with (iii) above. This shall be the data verified during the onsite.

(vii) Identification of local unions involved with contractor, when applicable.

(viii) Determination of compliance status: compliance or noncompliance.

(ix) Copy of show cause notice or compliance notification sent to contractor.

(x) Name of the Compliance Specialist who conducted the review and whether that person is a State, division or regional Compliance Specialist.

(xi) Concurrences at appropriate levels.

(5) Each contractor (joint venture is one contractor) will be reported separately. When a project review is conducted, the reports should be attached, with the initial report being that of the prime contractor followed by the reports of each subcontractor.

(6) Each review level is responsible for ensuring that required information is contained in the report.

(7) When a project review is conducted, the project work force shall be reported. When an areawide review is conducted (all Federal-aid, Federal, and non-Federal projects in an area), then areawide work force shall be reported. When a home office review is conducted, only home office work force shall be reported. Other information required by regional offices shall be detached before forwarding the reports to the Washington Headquarters, OCR.

(8) The Washington Headquarters, OCR, shall be provided all of the following:

(i) The compliance review report required by § 230.413(a)(4).

(ii) Corrective action plans.

(iii) Show cause notices or compliance notifications.

(iv) Show cause recissions.

While other data and information should be kept by regional offices (including progress reports, correspond-

ence, and similar review backup material), it should not be routinely forwarded to the Washington Headquarters, OCR.

(b) *Administrative requirements—State conducted reviews.* (i) Within days from the completion of the onsite verification and exit conference, State Compliance Specialist will:

(A) Prepare the compliance review report, based on information obtained.

(B) Determine the contractor's compliance status;

(C) Notify the contractor of compliance determination, i.e., send the contractor either notification of compliance or show cause notice; and

(D) Forward three copies of the compliance review report, and the compliance notification or show cause notice to the FHWA division EEO Specialist.

(ii) Within 10 days of receipt, FHWA division EEO Specialist shall:

(A) Analyze the State's report to ensure that it is complete and accurate;

(B) Resolve nonconcurrence, if any;

(C) Indicate concurrence, and, where appropriate, prepare comments; and

(D) Forward two copies of the compliance review report, and the compliance notification or show cause notice to the Regional Civil Rights Director.

(iii) Within 15 days of receipt, FHWA Regional Civil Rights Director shall:

(A) Analyze the report, ensure that it is complete and accurate;

(B) Resolve nonconcurrence, if any;

(C) Indicate concurrence, and, where appropriate, prepare comments; and

(D) Forward one copy of the compliance review report, and the compliance notification or show cause notice to the Washington Headquarters, OCR.

(2) *FHWA division conducted reviews.* (i) Within 15 days from the completion of the onsite verification and exit conference, the division EEO Specialist shall:

(A) Prepare compliance review report, based on information obtained.

(B) Determine the contractor's compliance status;

(C) Notify the State to send the contractor the compliance determination, i.e. either notification of compliance or show cause notice; and

(D) Forward two copies of the compliance review report and the compliance notification or show cause notice to the Regional Civil Rights Director.

(ii) Within 15 days of receipt, the FHWA Regional Civil Rights Director will take the steps outlined in 230.413(b)(1)(iii).

(3) *FHWA region conducted reviews.*

(i) Within 15 days from the completion of the onsite verification and exit conference the regional EEO Specialist shall:

(A) Prepare the compliance review report, based on information obtained;

(B) Determine the contractor's compliance status;

(C) Inform the appropriate division to notify the State to send the contractor the compliance determination and either notification of compliance or show cause notice; and

(D) Forward one copy of the compliance review report, and the compliance notification or show cause notice to the Washington Headquarters, OCR.

(4) Upon receipt of compliance review reports, the Washington Headquarters, OCR, shall review, resolve any nonconcurrences, and record them for the purpose of:

(i) Providing ongoing technical assistance to FHWA regional and division offices and SHA's;

(ii) Gathering a sufficient data base for program evaluation;

(iii) Ensuring uniform standards are being applied in the compliance review process;

(iv) Initiating appropriate changes in FHWA policy and implementing regulations; and

(v) Responding to requests from the General Accounting Office, Office of Management and Budget, Senate Subcommittee on Public Roads, and other agencies and organizations.

#### 230.415 Consolidated compliance reviews.

(a) *General.* Consolidated compliance reviews shall be implemented to determine employment opportunities on an areawide rather than an individual project basis. The consolidated compliance review approach shall be adopted and directed by either Headquarters, region, division, or SHA,

however, consolidated reviews shall at all times remain a cooperative effort.

(b) OFCCP policy requires contracting agencies to ensure compliance, in hometown or imposed plan areas, on an areawide rather than a project basis. The consolidated compliance review approach facilitates implementation of this policy.

(c) *Methodology*—(1) *Selection of a target area.* In identifying the target area of a consolidated compliance review (e.g. SMSA, hometown or imposed plan area, a multicounty area, or an entire State), consideration shall at least be given to the following facts:

(i) Minority and female work force concentrations;

(ii) Suspected or alleged discrimination in union membership or referral practices by local unions involved in highway construction;

(iii) Present or potential problem areas;

(iv) The number of highway projects in the target area; and

(v) Hometown or imposed plan reports that indicate underutilization of minorities or females.

(2) *Determine the review period.* After the target area has been selected, the dates for the actual onsite reviews shall be established.

(3) *Obtain background information.* EEO-3's Local Union Reports, should be obtained from regional offices of the EEOC. Target area civilian labor force statistics providing percent minorities and percent females in the target area shall be obtained from State employment security agencies or similar State agencies.

(4) *Identify contractors.* Every non-exempt federally assisted or direct Federal contractor and subcontractor in the target area shall be identified. In order to establish areawide employment patterns in the target area, employment data is needed for all contractors and subcontractors in the area. However, only those contractors with significant work forces (working prior to peak and not recently reviewed) may need to be actually reviewed onsite. Accordingly, once all contractors are identified, those contractors which will actually be reviewed onsite shall be determined. Compliance determinations shall only

reflect the status of crafts covered by Part II of plan bid conditions. Employment data of crafts covered by Part I of plan bid conditions shall be gathered and identified as such in the composite report, however, OFCCP has reserved the responsibility for compliance determinations on crafts covered by Part I of the plan bid conditions.

(5) *Contractor notification.* Those contractors selected for onsite review shall be sent a notification letter as outlined in § 230.409(c) along with a request for current workforce data<sup>2</sup> for completion and submission at the onsite review. Those contractors in the target area not selected for onsite review shall also be requested to supply current workforce data as of the onsite review period, and shall return the data within 15 days following the onsite review period.

(6) *Onsite reviews.* Compliance reviews shall then be conducted in accordance with the requirements set forth in § 230.409. Reviewers may use Form FHWA-86, Compliance Data Report, if appropriate. It is of particular importance during the onsite reviews that the review team provide for adequate coordination of activities at every stage of the review process.

(7) *Compliance determinations.* Upon completion of the consolidated reviews, compliance determinations shall be made on each review by the reviewer. Individual show cause notices or compliance notifications shall be sent (as appropriate) to each reviewed contractor.

The compliance determination shall be based on the contractor's target area work force (Federal, Federal-aid and non-Federal), except when the target area is coincidental with hometown plan area, compliance determinations must not be based on that part of a contractor's work force covered by Part I of the plan bid conditions, as previously set forth in this regulation. For example: ABC Contracting, Inc. employs carpenters, operating engi-

neers, and cement masons. Carpenters and operating engineers are covered by Part II of the plan bid conditions; however, cement masons are covered by Part I of the plan bid conditions. The compliance determination must be based only on the contractor's utilization of carpenters and operating engineers.

(d) *Reporting—(1) Composite report.* A final composite report shall be submitted as a complete package to Washington Headquarters, within 45 days after the review period and shall consist of the following:

(i) Compliance review report, each contractor and subcontractor with accompanying show cause notice or compliance notification.

(ii) Work force data to show the aggregate employment of all contractors in the target area.

(iii) A narrative summary of findings and recommendations to include the following:

(A) A summary of highway construction employment in the target area by craft, race, and sex. This summary should explore possible pattern discrimination or underutilization of minorities, possible causes, and should comment on the utilization of minorities and males on contractor's work force, the civilian labor force percent for minorities and females in the target area.

(B) If the target area is a plan area, a narrative summary of the plan's effectiveness with an identification of Part I and Part II crafts. This summary shall discuss possible differences in minority and female utilization between Part I and Part II crafts, documenting any inferences drawn from such comparisons.

(C) If applicable, discuss local labor unions' membership and/or representation practices that impact on the utilization of minorities and females in the target area. Complete and current copies of all collective bargaining agreements and copies of EEOC Local Union Reports, for all appropriate unions shall accompany the composite report.

(D) Any other appropriate data analyses, or information deemed necessary for a complete picture of the areawide employment.

<sup>2</sup>The Consolidated Workforce Questionnaire is convenient for the purpose and appears as Attachment 4 to Volume 2, Chapter 2, Section 3 of the Federal-Aid Highway Program Manual, which is available at the offices listed in 49 CFR Part 7, Appendix D.

(E) Considering the information compiled from the summaries listed above, make concrete recommendations on possible avenues for correcting problems uncovered by the analysis.

(2) *Annual planning report.* The proper execution of consolidated compliance reviews necessitates scheduling, along with other fiscal program planning. The Washington Headquarters, OCR, shall be notified of all planned consolidated reviews by August 10 of each year and of any changes in the target area or review periods, as they become known. The annual consolidated planning report shall indicate:

- (i) Selected target areas;
- (ii) The basis for selection of each area; and
- (iii) The anticipated review period (dates) for each target area.

#### APPENDIX A—SAMPLE SHOW CAUSE NOTICE

**Notified Mail, Return Receipt Requested**

Contractor's Name  
Address

City, State, and Zip Code.

**Data CONTRACTOR:** As a result of the review of your (Project Number) project located at (Project Location) conducted on (Date) by (Reviewing Agency), it is our determination that you are not in compliance with your equal opportunity requirements and that good faith efforts have not been made to meet your equal opportunity requirements in the following areas:

**List of Deficiencies**

Your failure to take the contractually required affirmative action has contributed to an unacceptable level of minority and female employment in your operations, particularly in the semiskilled and skilled categories of employees.

The Department of Labor regulations (41 FR 60) implementing Executive Order 11246, as amended, are applicable to your Federal-aid highway construction contract and are controlling in this matter (see Related Contract Provisions, Form PR-1273, clause II). Section 60-1.20(b) of these regulations provides that when equal opportunity deficiencies exist, it is necessary that you make a commitment in writing to correct such deficiencies before you may be found in compliance. The commitment must in-

clude the specific action which you propose to take to correct each deficiency and the date of completion of such action. The time period allotted shall be no longer than the minimum period necessary to effect the necessary correction. In accordance with instructions issued by the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, your written commitment must also provide for the submission of monthly progress reports which shall include a head count of minority and female representation at each level of each trade and a list of minority employees.

You are specifically advised that making the commitment discussed above will not preclude a further determination of non-compliance upon a finding that the commitment is not sufficient to achieve compliance.

We will hold a compliance conference at

(Address) at (Time) on (Date) for you to submit and discuss your written commitment. If your written commitment is acceptable and if the commitment is sufficient to achieve compliance, you will be found in compliance during the effective implementation of that commitment. You are cautioned, however, that our determination is subject to review by the Federal Highway Administration, the Department of Transportation, and OFCCP and may be disapproved if your written commitment is not considered sufficient to achieve compliance.

If you indicate either directly or by inaction that you do not wish to participate in the scheduled conference and do not otherwise show cause within 30 days from receipt of this notice why enforcement proceedings should not be instituted, this agency will commence enforcement proceedings under Executive Order 11246, as amended.

If your written commitment is accepted and it is subsequently found that you have failed to comply with its provisions, you will be advised of this determination and formal sanction proceedings will be instituted immediately.

In the event formal sanction proceedings are instituted and the final determination is that a violation of your equal opportunity contract requirements has taken place, any Federal-aid highway construction contracts or subcontracts which you hold may be canceled, terminated, or suspended, and you may be debarred from further such contracts or subcontracts. Such other sanctions as are authorized by Executive Order 11246, as amended, may also be imposed.

We encourage you to take whatever action is necessary to resolve this matter and are anxious to assist you in achieving compliance. Any questions concerning this notice should be addressed to (Name, Address, and Phone).

Sincerely yours,

[41 FR 34245, Aug. 13, 1976]

### APPENDIX B—SAMPLE CORRECTIVE ACTION PLAN

Deficiency 1: Sources likely to yield minority employees have not been contacted for recruitment purposes.

Commitment: We have developed a system of written job applications at our home office which readily identifies minority applicants. In addition to this, as a minimum, we will contact the National Association for the Advancement of Colored People (NAACP), League of Latin American Citizens (LULAC), Urban League, and the Employment Security Office within 20 days to establish a referral system for minority group applicants and expand our recruitment base. We are in the process of identifying other community organizations and associations that may be able to provide minority applicants and will submit an updated listing of recruitment sources and evidence of contact by \_\_\_\_\_ (Date).

Deficiency 2: There have been inadequate efforts to locate, qualify, and increase skills of minority and female employees and applicants for employment.

Commitment: We will set up an individual file for each apprentice or trainee by \_\_\_\_\_ (Date) in order to carefully screen the progress, ensure that they are receiving the necessary training, and being promoted promptly upon completion of training requirements. We have established a goal of at least 50 percent of our apprentices and trainees will be minorities and 15 percent will be female. In addition to the commitment made to deficiency number 1, we will conduct a similar identification of organizations able to supply female applicants. Based on our projected personnel needs, we expect to have reached our 50 percent goal for apprentices and trainees by \_\_\_\_\_ (Date).

Deficiency 3: Very little effort to assure subcontractors have meaningful minority group representation among their employees.

Commitment: In cooperation with the Regional Office of Minority Business Enterprise, Department of Commerce, and the local NAACP, we have identified seven minority-owned contractors that may be able to work on future contracts we may receive. These contractors (identified in the attached list) will be contacted prior to our bidding on all future contracts. In addition, we have scheduled a meeting with all sub-

contractors currently working on our contracts. This meeting will be held to inform the subcontractors of our intention to review their reports and require meaningful minority representation. This meeting will be held on \_\_\_\_\_ (Date) and will summarize the discussions and current posture of each subcontractor for review by \_\_\_\_\_ (Date). Additionally, as requested, we will submit a report on \_\_\_\_\_ (Date) on \_\_\_\_\_ (Date).

\_\_\_\_\_ (Date). Finally, we have committed ourselves to maintaining at least 20 percent minority and female representation in each trade during the time we are carrying out the above commitments. We plan to have completely implemented the provisions of these commitments by \_\_\_\_\_ (Date).

[41 FR 34245, Aug. 13, 1976]

### APPENDIX C—SAMPLE SHOW CAUSE AND RESCISSION

Certified Mail, Return Receipt Requested  
Date \_\_\_\_\_

Contractor \_\_\_\_\_

Address \_\_\_\_\_

City, State, and Zip Code \_\_\_\_\_

DEAR CONTRACTOR: On \_\_\_\_\_ (Date) you received a 30-day show cause notice from this office for failing to implement the required contract requirements pertaining to equal employment opportunity.

Your corrective action plan, discussed at the compliance conference held on \_\_\_\_\_ (Date), has been reviewed and determined to be acceptable. Your implementation of your corrective action plan shows that you are now in compliance with the required affirmative action and equal employment opportunity provisions considered in compliance with Executive Order 11246, as amended. If it should be determined that your corrective action plan is not sufficient to achieve compliance, this Rescission shall not preclude a subsequent finding of noncompliance.

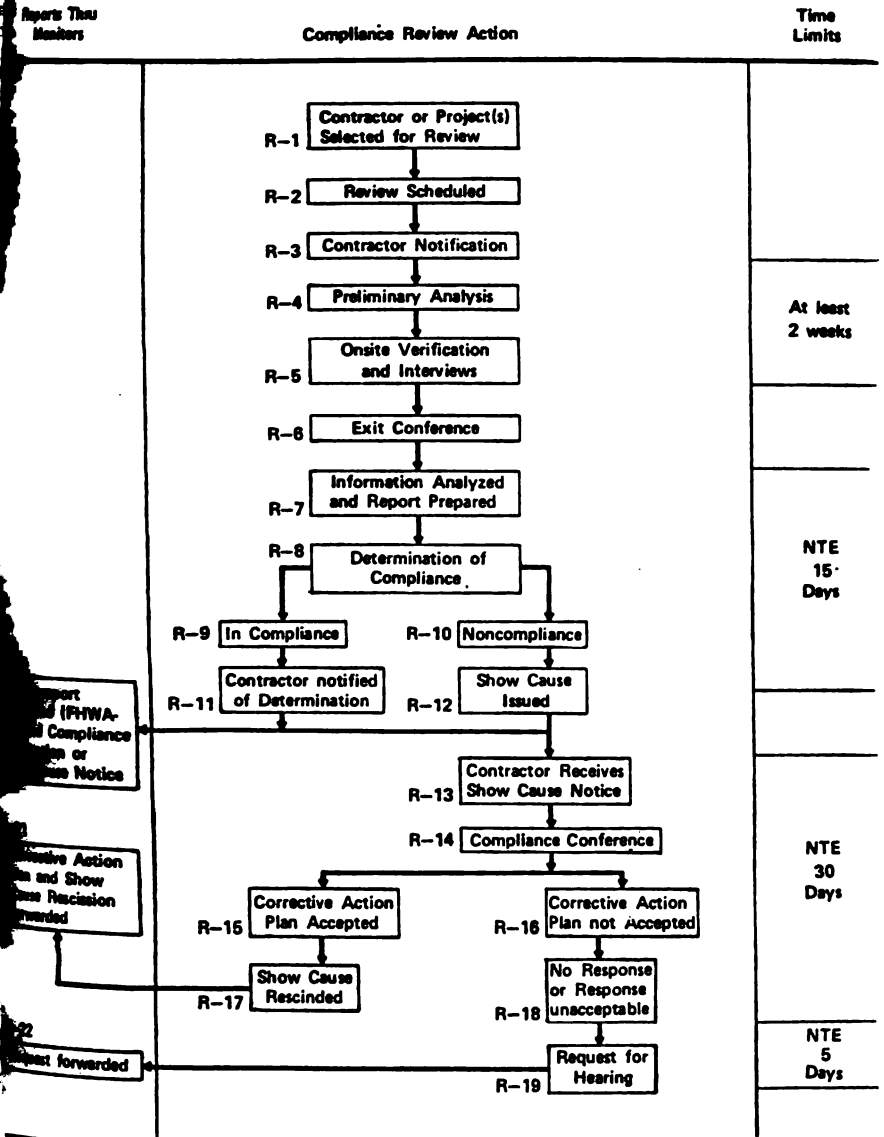
In view of the above, this letter is to inform you that the 30-day show cause notice of \_\_\_\_\_ (Date) is hereby rescinded. You are further advised that it is found that you have failed to comply with the provisions of your corrective action plan, formal sanction proceedings will be instituted immediately.

Sincerely,

APPENDIX D

EQUAL OPPORTUNITY COMPLIANCE REVIEW PROCESS FLOW CHART

46



[41 FR 34245, Aug. 13, 1976]

## SUBCHAPTER D—NATIONAL HIGHWAY INSTITUTE

### PART 260—EDUCATION AND TRAINING PROGRAMS

#### Subpart A—Fellowship and Scholarship Grants

##### Sec.

- 260.101 Purpose.
- 260.103 Definitions.
- 260.105 Policy.
- 260.107 Eligibility.
- 260.109 Selection.
- 260.111 Responsibilities of educational institutions.
- 260.113 Responsibilities of employing agencies.
- 260.115 Equal opportunity.
- 260.117 Application procedures.

#### Subparts B—C—[Reserved]

#### Subpart D—State Education and Training Programs

- 260.401 Purpose.
- 260.403 Policy.
- 260.405 Application and approval procedures.
- 260.407 Implementation and reimbursement.

#### APPENDIX A—REQUEST FOR USE OF FEDERAL-AID HIGHWAY FUNDS FOR EDUCATION OR TRAINING

### Subpart A—Fellowship and Scholarship Grants

**AUTHORITY:** 23 U.S.C. 307(a), 315, 321 and 403; and 49 CFR 1.48(b).

**SOURCE:** 43 FR 3558, Jan. 26, 1978, unless otherwise noted.

#### § 260.101 Purpose.

To establish policy for the Federal Highway Administration (FHWA) Fellowship and Scholarship Programs as administered by the National Highway Institute (NHI).

#### § 260.103 Definitions.

As used in this regulation, the following definitions apply:

(a) *Candidate.* One who meets the eligibility criteria set forth in § 260.107, and who has completed and submitted the necessary forms and documents in order to be considered for selection for a fellowship or scholarship.

(b) *Direct educational expenses.* Those expenses directly related to attending school including tuition, student fees, books, and expendable supplies but excluding travel expenses and from the school.

(c) *Employing agency.* The agency for which the candidate works. It may be either a State or local highway/transportation agency or FHWA.

(d) *Fellowship.* The grant presented to the recipient's school and administered by the school to assist the candidate financially during the period of graduate study.

(e) *Living stipend.* The portion of the fellowship or scholarship grant remaining after the direct educational expenses have been deducted.

(f) *Local highway/transportation agency.* The agency or metropolitan planning organization with the responsibility for initiating and carrying forward a highway program or public transportation program utilizing highways at the local level, usually the city or county level.

(g) *National Highway Institute (NHI).* The organization located within the FHWA responsible for administration of the FHWA fellowship and scholarship grant program.

(h) *Recipient.* The successful candidate receiving a fellowship or scholarship.

(i) *Scholarship.* The grant presented to the recipient's school and administered by the school to assist the candidate financially during the period of post-secondary study.

(j) *State highway/transportation agency.* The agency with the responsibility for initiating and carrying forward a highway program or public transportation program utilizing highways at the State level.

#### § 260.105 Policy.

It is the policy of the FHWA to administer, through the NHI, fellowship and scholarship grant programs to assist State and local agencies and the FHWA in developing the expertise needed for the implementation of their highway programs and to assist

the development of more effective transportation programs at all levels of government. These programs shall provide financial support for up to 24 months of either full-time or part-time study in the field of highway transportation. The programs for each year shall be announced by FHWA notices.<sup>1</sup> These notices shall contain an application form and shall announce the number of grants to be awarded and their value.

49 FR 3558, Jan. 26, 1978, as amended at 45 FR 6701, Oct. 9, 1980]

#### 260.107 Eligibility.

(a) Prior recipients of FHWA scholarships or fellowships are eligible if they will have completed all specific work commitments before beginning study under the programs for which applications are made.

(b) Candidates for the fellowship program shall have earned bachelor's or comparable college-level degrees prior to beginning advanced studies under the program.

(c) Candidates shall submit evidence of acceptance, or probable acceptance, of study in programs that will enhance their contributions to their employers. Evidence of probable acceptance may be a letter from the department chairman or other school official.

(d) Candidates shall agree to pursue certain minimum study loads as determined by the FHWA and designated in the FHWA notices announcing the programs each year.

(e) FHWA employees who receive awards will be required to execute continued service agreements, consistent with the Government Employees Training Act requirements, which obligate the employees to continue to work for the agency for three times the duration of the training received.

(f) Candidates who are students or employees of State or local highway/transportation agencies shall agree in writing to work on a full-time basis in public service with State or local highway/transportation agencies for a

specified period of time after completing study under the program. The FHWA notices announcing the programs each year shall specify the time period of the work commitment.

(g) Candidates shall agree to respond to brief questionnaires designed to assist the NHI in program evaluation both during and following the study period.

(h) Recipients of awards for full-time shall agree to limit their part-time employment as stipulated in the FHWA notice announcing the programs.

(i) Candidates shall not profit financially from FHWA grants. Where acceptance of the living stipend portion of the grant would result in a profit to the candidate, as determined by comparing the candidate's regular full-time salary with the candidate's part-time salary and employer salary support plus living stipend, the grant amount will be reduced accordingly. In cases where a candidate must relocate and maintain two households, exceptions to this condition will be considered.

(j) Candidates shall be citizens, or shall declare their intent to become citizens of the United States.

#### § 260.109 Selection.

(a) Candidates shall be rated by a selection panel appointed by the Director of the NHI. Members of the panel shall represent the highway transportation interests of government, industry, and the academic community. The factors considered by the selection panel are weighed in accordance with specific program objectives.

(b) The major factors to be considered by the panel are:

(1) Candidate's potential to contribute to a public agency's highway transportation program,

(2) Relevance of a candidate's study program to the objectives of the fellowship or scholarship program,

(3) Relevant experience, and

(4) Academic and professional achievements.

(c) Using ratings given by the selection panel, the Director of the NHI shall select candidates for awards and designate alternates.

<sup>1</sup>The Federal Highway Administration notices are available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.



(d) The FHWA may designate in the FHWA notices announcing the programs the maximum number of awards that will be made to employees of any one agency.

**§ 260.111 Responsibilities of educational institutions.**

(a) The college or university chosen by the grant recipient shall enter into an appropriate agreement with the FHWA providing for the administration of the grant by the college or university.

(b) The college or university chosen by the recipient shall designate a faculty advisor prior to the commitment of funds by the FHWA. The faculty advisor will be requested to submit reports of the recipient's study progress following completion of each study period. These reports are oriented toward total program evaluation. To assure the recipient's rights to privacy, the FHWA will obtain appropriate advance concurrences from the recipient.

**§ 260.113 Responsibilities of employing agencies.**

(a) A candidate's employing agency is responsible for furnishing a statement of endorsement and information concerning the relevancy of the candidate's study to agency requirements. The agency is encouraged to identify educational and training priorities and to provide backup to support its priority candidates for these programs.

(b) Employing agencies are encouraged to give favorable consideration to the requests of candidates for educational leave and salary support for the study period to facilitate the candidates' applications. Agency decisions involving salary support and educational leave that will affect the acceptance of awards by recipients should be made at the earliest possible date to provide adequate time for the FHWA to select alternates to replace candidates that decline their awards.

(c) Agencies are responsible for negotiations with their candidates concerning conditions of reinstatement and the candidates' commitments to return to work.

(d) Employing agencies are encouraged to publicize the availability of these grants throughout the agencies,

to implement procedures for internal evaluation of applications, and to forward the applications to the FHWA division office in their State.

(e) Employing agencies that choose to process their employees' applications are responsible for observing cutoff date for the FHWA to receive applications. This date will be stipulated in the Notices announcing the program for each academic year.

**§ 260.115 Equal opportunity.**

(a) Consistent with the provisions of the Civil Rights Act of 1964 and Title VI, assurances executed by each State, 23 U.S.C. 324, and 29 U.S.C. 794, no applicant, including otherwise qualified handicapped individuals, shall on grounds of race, color, religion, national origin, or handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under this program.

(b) In accordance with Executive Order 11141, no individual shall be denied benefits of this program on the basis of age.

(c) Agencies should make information on this program available to eligible employees, including other qualified handicapped individuals, as to assure nondiscrimination on grounds of race, color, religion, national origin, age, or handicap.

**§ 260.117 Application procedures.**

(a) The FHWA notices announcing each year's programs and containing the application form may be obtained from FHWA regional and division offices, State highway agencies, metropolitan planning organizations, Governors' highway safety representatives, Urban Mass Transportation Administration regional directors, major transit authorities and from colleges and universities. Forms may also be obtained from the NHI, HHI-3, FHWA, Washington, D.C. 20590.

(b) In order to become a candidate the applicant shall complete and forward the application form according to the instructions in the FHWA notice announcing the programs. The cutoff date for submitting the application stipulated in the notices shall be observed.

**Subparts B-C—[Reserved]****Subpart D—State Education and Training Programs**

**AUTHORITY:** 23 U.S.C. 315, 321 (b) and (c); 49 CFR 1.48(b).

**SOURCE:** 43 FR 35477, Aug. 10, 1978, unless otherwise noted.

**§ 260.401 Purpose.**

To prescribe policy and implement procedures for the administration of Federal-aid funds for education and training of State and local highway department employees.

**§ 260.403 Policy.**

It is the policy of the Federal Highway Administration (FHWA) to provide continuing education of State and local highway agency employees engaged or to be engaged in Federal-aid highway work. To carry out this policy, States are encouraged to fully utilize the authority contained in 23 U.S.C. 321(b) and 321(c).

**§ 260.405 Application and approval procedures.**

The State may apply for education and training funds by submitting a

signed agreement designating the desired Federal-aid funds, not to exceed the limits in 23 U.S.C. 321(b). The FHWA's approval of the agreement will constitute obligation of funds and authorization for work to proceed.

**§ 260.407 Implementation and reimbursement.**

(a) After execution of the fiscal agreement, the State may make grants and contracts with public and private agencies, institutions, and individuals to provide highway-related training and education. The principal recipients of this training shall be employees who are engaged, or likely to be engaged, in Federal-aid highway work.

(b) Claims for Federal-aid reimbursement of costs incurred may be submitted following established procedures to cover 75 percent of the cost of tuition and direct educational expenses (including incidental training, equipment, and program materials) exclusive of travel, subsistence, or salary of trainees.

[43 FR 35477, Aug. 10, 1978, as amended at 45 FR 6378, Jan. 28, 1980]

## APPENDIX A

|                                                                                                                                                                                                                                                                                                                                                               |                    |                                                                    |                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------------------------------------------------------|-------------------------|
| <b>U.S. DEPARTMENT OF TRANSPORTATION<br/>FEDERAL HIGHWAY ADMINISTRATION</b><br><br><b>REQUEST FOR USE OF FEDERAL-AID HIGHWAY<br/>FUNDS FOR EDUCATION OR TRAINING</b><br><i>(NATIONAL HIGHWAY INSTITUTE)</i>                                                                                                                                                   |                    | 1. STATE                                                           |                         |
|                                                                                                                                                                                                                                                                                                                                                               |                    | 2. DATE OF REQUEST                                                 |                         |
|                                                                                                                                                                                                                                                                                                                                                               |                    | 3. PROJECT NO.                                                     |                         |
| 4. NAME OF AGENCY SPONSORING COURSE                                                                                                                                                                                                                                                                                                                           |                    | 5. CO-SPONSOR (If any)                                             |                         |
| 6. COURSE TITLE                                                                                                                                                                                                                                                                                                                                               | 7. DATE OF PROGRAM |                                                                    | 8. ESTIMATED ATTENDANCE |
|                                                                                                                                                                                                                                                                                                                                                               | 7A. BEGINNING      | 7B. ENDING                                                         |                         |
| 9. PURPOSE AND EDUCATIONAL OBJECTIVES OF THE PROGRAM <i>(Be as Specific as Possible)</i>                                                                                                                                                                                                                                                                      |                    |                                                                    |                         |
| 10. PROPOSED COURSE OUTLINE <i>(Attach a copy of the course outline including a list of the subjects to be presented, the sequence of the presentation, the proposed speakers and the amount of time allotted to each subject. Also include the source material upon which the course is based, and the text books and collateral references to be used.)</i> |                    |                                                                    |                         |
| 11. PROPOSED COURSE SCHEDULE. <i>(Provide information on the length of the course, including number of days, days of the week, and hours per day.)</i>                                                                                                                                                                                                        |                    |                                                                    |                         |
| 12. TOTAL HOURS OF INSTRUCTION                                                                                                                                                                                                                                                                                                                                |                    |                                                                    |                         |
| 13. CRITERIA FOR ELIGIBILITY OF PARTICIPANTS <i>(Including organizational affiliation)</i>                                                                                                                                                                                                                                                                    |                    |                                                                    |                         |
| 14. WHERE WILL COURSE BE HELD?                                                                                                                                                                                                                                                                                                                                |                    |                                                                    |                         |
| 15. IS THIS PROGRAM A REPEAT OF A COURSE PREVIOUSLY GIVEN? <i>(If yes fill-in 15A.)</i>                                                                                                                                                                                                                                                                       |                    | 15A. WHEN WAS IT LAST HELD?                                        |                         |
| <input type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                      |                    |                                                                    |                         |
| 16. IS THIS PROGRAM RECURRING? <i>(If yes fill-in 16A.)</i>                                                                                                                                                                                                                                                                                                   |                    | 16A. GIVE FREQUENCY                                                |                         |
| <input type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                      |                    | <input type="checkbox"/> SEMESTER <input type="checkbox"/> QUARTER |                         |
|                                                                                                                                                                                                                                                                                                                                                               |                    | <input type="checkbox"/> OTHER <i>(Specify)</i> _____              |                         |
| 17. NAME AND TITLE OF TECHNICAL DIRECTOR <i>(Responsible for technical content.)</i>                                                                                                                                                                                                                                                                          |                    |                                                                    |                         |
| 18. NAME AND TITLE OF COORDINATOR <i>(Responsible for arrangements)</i>                                                                                                                                                                                                                                                                                       |                    |                                                                    |                         |

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89

## SUBCHAPTER E—PLANNING

### PART 420—PROGRAM MANAGEMENT AND COORDINATION

#### Subpart A—Highway Planning and Research and Development—Program Approval and Authorization

##### Sec.

- 420.101 Purpose.
- 420.103 Definitions.
- 420.105 Policy.
- 420.107 Fiscal procedures.
- 420.109 Authorization procedures.
- 420.111 Planning program coverage.

#### Subpart A—Highway Planning and Research and Development—Program Approval and Authorization

**AUTHORITY:** 23 U.S.C. 104, 307, and 315; and 40 CFR 1.48(b), unless otherwise noted.

**SOURCE:** 41 FR 31531, July 29, 1976, unless otherwise noted.

##### § 420.101 Purpose.

The purpose of this subpart is to prescribe Federal Highway Administration (FHWA) policies and procedures related to program approval and authorization of highway planning and research and development projects undertaken with Federal-aid funds in accordance with 23 U.S.C. 104(f) and 307(c), as amended. Procedures for allocating and matching of Metropolitan planning funds authorized under 23 U.S.C. 104(f)(1) (PL funds) and information regarding obligation procedures for these funds that are available specifically to designated Metropolitan Planning Organizations (MPO) are also discussed in 23 CFR Part 450, Subpart B.

##### § 420.103 Definitions.

(a) "Class of Fund" refers to each of the several Federal-aid funds in 23 U.S.C. 104(b) which provide the source of the 1½ percent funds authorized under 23 U.S.C. 307(c)(2) (HPR funds) and the optional one-half percent funds authorized under 23 U.S.C. 307(c)(3) (PR funds).

(b) "Type of Fund" refers to HPR, PR and PL funds.

(c) "Annual HP&R Work Program" refers to the total highway planning

and research and development effort described in an annual statement of proposed work and estimated cost.

##### § 420.105 Policy.

(a) HPR and PL funds shall each be administered as a single fund. All funds shall be administered as a single fund, but the identity of such funds as primary, secondary, or urban, shall be preserved.

(b) Under authority of 23 U.S.C. 104(f)(3) and pursuant to the Secretary's delegation of authority in 49 CFR 1.48(b)(3), the Federal Highway Administrator has determined that the matching ratio other than that set forth in 23 U.S.C. 120 be established and accordingly the Federal share payable on account of work performed using PL funds shall not be less than 80 percent.

(c) The State highway agency (SHA) shall have primary responsibility for administering PL funds.

(d) Highway planning activities shall be consistent with State energy conservation goals and objectives and where established, reflect energy conservation targets.

(Sec. 403(b), Pub. L. 95-620; E.O. 12185)  
[41 FR 31531, July 29, 1976, as amended; 45 FR 58036, Aug. 29, 1980]

##### § 420.107 Fiscal procedures.

Upon receipt of notice of apportionment of Federal-aid funds for each fiscal year, the SHA shall give notice to the MPO of the amount of Federal funds to be made available to that organization according to the approved distribution formula (23 CFR 450.200(b)), for that State.

##### § 420.109 Authorization procedures.

(a) Authorization to proceed with the work program in whole or in part shall be deemed a contractual obligation of the Federal Government pursuant to 23 U.S.C. 106 and shall require that appropriate funds are available for Federal participation in the cost of the work.

(b) In order to provide an orderly transition to full compliance with this

regulation, a transition period will exist from the date of issuance of this regulation until October 1, 1978. During that period States may request authorization to proceed with their work programs without obligation of funds. The written notice to a State approving its request will contain the following statement: "Authorization to proceed shall not constitute any commitment of Federal funds nor shall it be construed as creating in any manner any obligation on the part of the Federal Government to provide Federal funds for the undertaking."

(c) The project agreement (PR-2) may be executed when the SHA has been authorized to proceed with the work program in whole or in part. However, in the event the project agreement is executed for only part of the work program, the project agreement shall be amended at such time as the SHA is authorized to proceed with the remaining part.

**§ 450.111 Planning program coverage.**

In support of the planning of future highway programs and local public transportation systems under 23 U.S.C. 307(c), State planning work programs shall include activities to:

(a) Support the development of the transportation component of State energy conservation and energy contingency plans and policies,

(b) Identify and evaluate policy, program, and project options that offer the greatest opportunities for energy conservation in addressing transportation needs,

(c) Monitor transportation-related energy consumption indicators, and

(d) Estimate current and future transportation demands on energy consumption.

(Sec. 403(b), Pub. L. 95-620; E.O. 12185)

(45 FR 58036, Aug. 29, 1980)

**PART 450—PLANNING ASSISTANCE AND STANDARDS**

**Subpart A—Urban Transportation Planning**

Sec.

- 450.100 Purpose.
- 450.102 Applicability.
- 450.104 Definitions.

Sec.

- 450.106 Metropolitan planning organization.
- 450.108 Urban transportation planning process: Funding.
- 450.110 Urban transportation planning process: Products.
- 450.112 Urban transportation planning process: Participant responsibilities.
- 450.114 Urban transportation planning process: Certification.

**Subpart B—Transportation Improvement Program**

- 450.200 Purpose.
- 450.202 Applicability.
- 450.204 Transportation improvement program: General.
- 450.206 Annual (or biennial) element: Project selection.
- 450.208 Annual (or biennial) element: Content.
- 450.210 Selection of projects for implementation.
- 450.212 Program approval.

**Subpart C—Metropolitan Planning Funds**

- 450.300 Purpose.
- 450.302 Allocation.
- 450.304 Matching.
- 450.306 Programming of Metropolitan Planning Funds.

**Subpart A—Urban Transportation Planning**

**AUTHORITY:** 23 U.S.C. 104(f)(3), 134 and 315; secs. 3, 5, 8, 9, and 9A of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, 1607, 1607a, and 1607a-1); secs. 174 and 176 of the Clean Air Act (42 U.S.C. 7504 and 7506); and 49 CFR 1.48(b) and 1.51.

**SOURCE:** 48 FR 30339, June 30, 1983, unless otherwise noted.

**§ 450.100 Purpose.**

The purpose of this subpart is to implement 23 U.S.C. 134, and section 8 of the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1607), which require that each urbanized area, as a condition to the receipt of Federal capital or operating assistance, have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs consistent with the comprehensively planned development of the urbanized area. These plans and programs support transpor-

tation improvements and subsequent project development activities in the area.

**§ 450.102 Applicability.**

The provisions of this subpart are applicable to the transportation planning process in urbanized areas.

**§ 450.104 Definitions.**

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this part as so defined.

(b) As used in this part:

(1) "Governor" means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

(2) "Designated section 9 recipient" means that organization designated in accordance with section 9(m) or 5(b)(1) of the UMT Act, as amended, as being responsible for receiving and dispensing section 9 and/or section 5 funds.

(3) "Metropolitan planning organization" means that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as provided in 23 U.S.C. 104(f)(3), and capable of meeting the requirements of sections 3(e)(1), 5(l), 8 (a) and (c) and 9(e)(3)(G) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(l), 1607 (a) and (c) and 1607a(e)(3)(G)). The metropolitan planning organization is the forum for cooperative transportation decision-making.

(4) "Annual (or biennial) element" means a list of transportation improvement projects proposed for implementation during the first year (or 2 years) of the program period.

(5) "Transportation improvement program (TIP)" means a staged multiyear program of transportation improvements including an annual (or biennial) element.

**§ 450.106 Metropolitan planning organization.**

(a) Designation of a metropolitan planning organization shall be made by agreement among the units of general purpose local government and the Governor. To the extent possible, only one metropolitan planning organization should be designated for each ur-

banized area or group of contiguous urbanized areas.

(b) Principal elected officials of general purpose local governments shall be represented on the metropolitan planning organization to the extent agreed to pursuant to paragraph (a) of this section.

**§ 450.108 Urban transportation planning process: Funding.**

(a) Funds authorized by 23 U.S.C. 104(f) shall be made available by the State to the metropolitan planning organization, as required by 23 U.S.C. 104(f)(3).

(b) Funds authorized by section 5 of the UMT Act (49 U.S.C. 1607) shall be made available to the metropolitan planning organization, to the extent possible, in urbanized areas with populations of 200,000 or more or within the metropolitan planning organization represents a group of contiguous or related urbanized areas with an aggregate population of 200,000 or more. In urbanized areas with populations below 200,000, such funds shall be made available to the State, at the State's option, to allocate among such urbanized areas, or, with respect to any given urbanized area, to use for the benefit of such area with the concurrence of the metropolitan planning organization. If the State does not elect this option, these funds shall be made available directly to the metropolitan planning organization, to the extent possible.

(c) In urbanized areas with populations of 200,000 or more, the State metropolitan planning organization and designated section 9 or 9A fund recipient, where section 9 or 9A funds are used for planning purposes, shall develop a unified planning work program (UPWP) which describes urban transportation and transportation related planning activities anticipated in the area during the next 1- or 2-year period including the planning work to be performed with Federal planning assistance and with funds available under section 9 or 9A, if any. The UPWP shall be endorsed by the metropolitan planning organization.

(d) In urbanized areas with populations below 200,000, the State and the

metropolitan planning organization (and where section 9 or 9A funds are to be used for planning, the designated recipient) shall cooperatively describe and document how Federal planning funds and funds available under section 9 or 9A if any, would be expended for planning in each area, who would do the work and what work in general would be done. The work proposed shall be endorsed by the metropolitan planning organization.

(e) The staff resources of other agencies (such as the State, local government and transit operator staff) may be utilized where appropriate to carry out the planning process, including the activities funded with Federal planning funds, through contractual agreements.

(The reporting requirements contained in paragraph (c) were approved by the Office of Management and Budget under OMB control number 2132-0031.)

#### § 450.110 Urban transportation planning process: Products.

The urban transportation planning process shall include the development of:

(a) A transportation plan describing policies, strategies and facilities or changes in facilities proposed. The transportation plan shall be formulated according to the requirements of 23 U.S.C. 134 and section 8 of the UMT Act (49 U.S.C. 1607) which include and analysis of transportation system management strategies to make more efficient use of existing transportation systems.

(b) A transportation improvement program (TIP) including an annual (or biennial) element as prescribed in Subpart B of this part. The program shall be a staged multiyear program of transportation improvement projects consistent with the transportation plan.

(c) Other planning and project development activities deemed necessary by State and local officials to assist in addressing transportation issues in the area.

(The reporting requirements contained in paragraph (b) were approved by the Office of Management and Budget under OMB control number 2132-0529.)

#### § 450.112 Urban transportation planning process: Participant responsibilities.

(a) The metropolitan planning organization, the State, and publicly owned operators of mass transportation services shall determine their mutual responsibilities in the development of the planning work program, transportation plan and TIP specified in §§ 450.108 and 450.110.

(b) The metropolitan planning organization shall endorse the transportation plan and TIP required by §§ 450.110 and 450.204. These endorsements are prerequisites for the approval of programs of projects in urbanized areas pursuant to 23 U.S.C. 105(d) and 134(a), section 8(c) of the UMT Act (49 U.S.C. 1607(c)), and Subpart B of this part.

#### § 450.114 Urban transportation planning process: Certification.

(a) The urban transportation planning process shall include activities to support the development and implementation of a transportation plan and TIP/annual (or biennial) element and subsequent project development activities, including the environmental impact assessment process. These activities shall be included as necessary and to the degree appropriate for the size of the metropolitan area and the complexity of its transportation problems.

(b) The planning process shall be consistent with:

(1) Sections 8(e) and 3(e) (49 U.S.C. 1607 and 1602(e)) of the UMT Act concerning involvement of the appropriate public and private transportation providers;

(2) Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794.

(3) Section 105(f) of the Surface Transportation Assistance Act of 1982 regarding the involvement of minority business enterprises in FHWA and UMTA funded projects (Pub. L. 97-424, section 105(f); 49 CFR Part 23); and

(4) Section 16 of the UMT Act 49 U.S.C. 1612, section 165(b) of the Federal-Aid Highway Act of 1973, as amended, and 49 CFR Part 27, which



call for special efforts to plan public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons.

(c) At the time the TIP/annual (or biennial) element is submitted, the State and the metropolitan planning organization shall certify that the planning process is being carried on in conformance with all applicable requirements of:

(1) 23 U.S.C. 134, section 8 of the UMT Act (49 U.S.C. 1607) and these regulations;

(2) Sections 174 and 176 (c) and (d) of the Clean Air Act (42 U.S.C. 7504, 7506 (c) and (d)).

### Subpart B—Transportation Improvement Program

**AUTHORITY:** 23 U.S.C. 105, 134(a), and 135(b); secs. 3, 5, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c); secs. 174 and 176 of the Clean Air Act (42 U.S.C. 7504 and 7506); and 49 CFR 1.48(b) and 1.51.

**SOURCE:** 48 FR 30340, June 30, 1983, unless otherwise noted.

#### § 450.200 Purpose.

The purpose of this subpart is to establish regulations for the development, content, and processing of a cooperatively developed transportation improvement program (TIP) in urbanized areas.

#### § 450.202 Applicability.

(a) The provisions of this subpart shall be applicable to projects in or serving urbanized areas with funds made available under:

(1) 23 U.S.C. 104(b)(6) (urban system projects);

(2) 23 U.S.C. 103(e)(4) (Interstate substitution projects);

(3) Sections 3, 5, 9, and 9A of the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1602, 1604, 1607a and 1607a-1) (UMTA capital and operating assistance projects);

(4) 23 U.S.C. 104(b)(1) (projects on extensions of primary systems in urbanized areas), except as provided in this subpart

(5) 23 U.S.C. 104(b)(5) (A) and (B) (projects on the Interstate System), except as provided in this subpart.

(6) 23 U.S.C. 144 (highway bridge replacement and rehabilitation projects), except as provided in this subpart.

(b) Projects under paragraphs (4), (5) and (6) of this section which are for resurfacing, restoration, rehabilitation, reconstruction (4R), or highway safety improvement; and which will not alter the function, traffic capacity or capability of the facility being improved may be excluded from the TIP including its annual (or biennial) element by agreement between the State and the metropolitan planning organization.

#### § 450.204 Transportation improvement program: General.

(a) The TIP, including the annual (or biennial) element, shall be developed by the metropolitan planning organization, the State and publicly owned operators of mass transportation services in cooperation with recipients authorized under sections 5 or 9A of the UMT Act (49 U.S.C. 1607a or 1607a-1).

(b) The TIP shall as a minimum: (1) Consist of improvements from the transportation plan developed under § 450.110(a) and recommended for Federal funding during the program period;

(2) Cover a period of not less than 3 years;

(3) Indicate the area's priorities; and

(4) Include realistic estimates of the total costs and revenues for the program period.

(c) The metropolitan planning organization endorsement of the TIP including the annual (or biennial) element is a prerequisite for the approval of programs of projects in urbanized areas pursuant to 23 U.S.C. 105(d) and 134(a), and section 8(c) of the UMT Act (49 U.S.C. 1607(c)). The State, metropolitan planning organization, and publicly owned operators of mass transportation services are encouraged to develop simplified procedures for updating or modifying an endorsed annual (or biennial) element.

(d) The TIP including the annual (or biennial) element shall be submitted:

(1) To the Governor and the Urban Mass Transportation Administrator, and

(2) Through the State to the Federal Highway Administrator for use as a basis for meeting the applicable air quality procedures contained in 23 CFR Part 770 and for the subsequent approval of the statewide program of projects under 23 U.S.C. 105 in accordance with § 450.212 and 23 CFR Part 330.

§ 450.206 Annual (or biennial) element: Project selection.

(a) Federally funded projects shall be selected for inclusion in the annual (or biennial) element at all phases in the development of the transportation improvement for which program action is proposed. The projects to be included in the annual (or biennial) element of the TIP shall be selected in accordance with:

(1) State and local law;

(2) 23 U.S.C. 105(d) regarding the selection of urban system projects by the appropriate local officials with concurrence of the State highway department;

(3) 23 U.S.C. 103(e)(4) and 23 CFR Part 476 regarding the selection of interstate substitution projects by the responsible local officials; and

(4) Procedures acceptable to the State highway department, the metropolitan planning organization, and local public transit operating officials.

(b) The endorsement of the annual (or biennial) element of the TIP by the metropolitan planning organization constitutes the selection of the projects by local officials pursuant to 23 U.S.C. 105(d) and 23 U.S.C. 103(e)(4).

§ 450.208 Annual (or biennial) element: Content.

(a) Except as provided in § 450.210(b)(3) and (4), the annual (or biennial) element shall contain projects selected under § 450.206 and endorsed under § 450.204.

(b) With respect to each project under paragraph (a) of this section the annual (or biennial) element shall include:

(1) Identification of the projects, including the phase of phases proposed for implementation.

(2) Estimated total cost and the amount of Federal funds proposed to be obligated during the program period.

(3) Proposed source of Federal and non-Federal matching funds; and

(4) Identification of the recipient and State and local agencies responsible for carrying out the project.

(c) Projects proposed for Federal funding that are not considered to be of appropriate scale for individual inclusion in the annual (or biennial) element may be grouped by functional classification, geographic area or work type.

(d) The annual (or biennial) element shall be reasonably consistent with the amount of Federal funds expected to be available to the area. Federal funds that have been allocated to the area pursuant to 23 U.S.C. 150 shall be identified.

(e) The total Federal share of projects included in the annual (or biennial) element and proposed for funding under sections 5, 9, or 9A of the UMT Act (49 U.S.C. 1604, 1607a and 1607a-1) may not exceed apportioned section 5, 9, or 9A funds available to the urbanized area during the program year (or 2 years).

§ 450.210 Selection of projects for implementation.

(a) The projects proposed to be implemented with Federal assistance under sections 3, 5, 9 and 9A of the UMT Act (49 U.S.C. 1602, 1604, 1607a and 1607a-1) and nonhighway public mass transit projects under 23 U.S.C. 103(e)(4) shall be those contained in the annual (or biennial) element of the TIP submitted to the Urban Mass Transportation Administrator.

(b) Upon receipt of the TIP, the State shall include in the statewide program of projects required under 23 U.S.C. 105:

(1) Those projects drawn from the annual (or biennial) element and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(6) (Federal-aid urban system) in which the State concurs: provided, however,

that in case any where the State does not concur in a nonhighway public mass transit project, a statement describing the reasons for the nonconcurrence shall accompany the statewide program of projects.

(2) Those projects drawn from the annual (or biennial) element and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(1) (projects on urban extensions of the Federal-aid primary system) and 23 U.S.C. 104(b)(5) (Interstate System projects in urbanized areas); and 23 U.S.C. 144 (highway bridge replacement and rehabilitation projects), in which it concurs;

(3) Those projects not drawn from the annual (or biennial) element that are proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(6) (Federal-aid highway urban system), 23 U.S.C. 104(b)(1) (Projects on urban extensions of the Federal-aid primary system) and 23 U.S.C. 104(b)(5) (Projects on the Interstate System) provided that:

(i) Previous phases of such project or projects were selected pursuant to § 450.206, and advanced;

(ii) Such project or projects are for highway transportation improvements for which there has been a Federal authorization to acquire right-of-way or Federal approval of physical construction or implementation where right-of-way acquisition was not previously federally funded; and

(iii) A statement accompanies the statewide program of projects which includes for such projects the views of the metropolitan planning organization and indicates how the requirements of 23 U.S.C. 134(a) have been met; and

(4) Those projects not drawn from the annual (or biennial) element that were excluded under § 450.202(b) and are proposed to be implemented.

(c) The preparation and endorsement of the TIP, the selection of projects in accordance with this subpart, and the agreement under § 450.202(b), if any, will meet the requirements of 23 U.S.C. 105(d), 23 U.S.C. 134(a) and section 8(c) of the UMT Act (49 U.S.C. 1607(c)).

(d) The State shall notify the appropriate metropolitan planning organiza-

tions of the 23 U.S.C 105 program actions taken on projects in each urbanized area.

#### § 450.212 Program approval.

(a) Upon the determination by the Federal Highway Administrator and the Urban Mass Transportation Administrator that the TIP or portion thereof is in conformance with this subpart and that the planning process is in conformance with Subpart A, programs of projects and Interstate Substitution projects selected for implementation under §§ 450.210 and 450.206, respectively will be considered for approval as follows:

(1) Federal-aid urban system projects included in the statewide program of projects under 23 U.S.C. will be approved by:

(i) The Federal Highway Administrator with respect to highway projects;

(ii) The Urban Mass Transportation Administrator with respect to nonhighway public mass transit projects;

(iii) The Federal Highway Administrator and the Urban Mass Transportation Administrator jointly in the case where the statewide program projects submitted pursuant to 23 U.S.C. 105 does not include all Federal-aid urban system nonhighway public mass transit projects contained in the annual (or biennial) element.

(2) Interstate substitution nonhighway public mass transit projects included in the annual (or biennial) element will be approved by the Urban Mass Transportation Administrator.

(3) Projects proposed to be implemented under sections 3, 5, 9, and 10 of the UMT act (49 U.S.C. 1602, 1607a and 1607a-1) included in the annual (or biennial) element will be approved by the Urban Mass Transportation Administrator after considering any comments received from the Governor within 30 days of the submission required by § 450.204(d)(1).

(4) Federal-aid urban extensions, primary projects, Interstate projects and highway bridge replacement and rehabilitation projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by the Federal Highway Administrator.

(b) Approvals by the Federal Highway Administrator or joint approvals by the Federal Highway Administration and Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart and with 23 CFR Part 630, Subpart A. These approvals will constitute:

(1) The approval required under 23 U.S.C. 105; and

(2) A finding that the projects are based on a continuing, comprehensive transportation planning process carried on cooperatively by the States and local communities in accordance with the provisions of 23 U.S.C. 134.

(c) Approvals by the Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart. These approvals will constitute:

(1) The approval required under section 8(c) of the UMT Act (49 U.S.C. 507(c));

(2) A finding that the program is based on a continuing, cooperative and comprehensive transportation planning process carried on in accordance with the provisions of section 8 of the UMT Act (49 U.S.C. 1607), as applicable;

(3) A finding that the projects are needed to carry out a program for a unified officially coordinated urban transportation system in accordance with the provisions of section 3(e)(1), (1), or 8(c) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(1) or 1607(c)), as applicable; and

(4) In nonattainment areas which require transportation control measures, finding that the program conforms with the SIP in accordance with procedures in 49 CFR Part 623.

### Subpart C—Metropolitan Planning Funds

**AUTHORITY:** 23 U.S.C. 104(f) and 315; 49 U.S.C. 1655; 49 CFR 1.48(b) and 1.50(f).

**SOURCE:** 46 FR 40176, Aug. 6, 1981, unless otherwise noted. Redesignated at 48 FR 340, June 30, 1983.

#### 50.300 Purpose.

(a) The purpose of this subpart is to set forth procedures for allocation, matching, and programming for the one-half percent metropolitan plan-

ning funds authorized by 23 U.S.C. 104(f).

(b) Section 112 of the 1973 Highway Act (Pub. L. 93-87) amends section 104(f) of Title 23, United States Code, to provide that, after making the deduction authorized by 23 U.S.C. 104(a), not more than one-half percent of the total funds authorized to be appropriated for expenditure on Federal-aid systems shall be apportioned to the States for the purpose of carrying out the provisions of 23 U.S.C. 134, relating to transportation planning in urban areas. These funds will be apportioned to the States in the ratio which the population in urbanized areas or parts thereof in each State bears to the total population in such urbanized areas in all the States as shown by the latest available census, except that no State may receive less than one-half percent of the sums so apportioned. Each State is required to allocate these funds to the Metropolitan Planning Organizations (MPO's) designated in accordance with a formula developed by the State and approved by the Federal Highway and Urban Mass Transportation Administrators. In developing the allocation formula, the State shall, to the extent possible, consult with the affected MPO's.

#### § 450.302 Allocation.

(a) Funds authorized by section 104(f) (PL funds) shall be allocated in accordance with a formula to MPO's responsible for carrying out the provisions of 23 U.S.C. 134. If a State does not have an urbanized area, the State shall expend the PL funds only on items related to urban transportation planning. In that event, the funds need not be allocated by formula, but expenditures shall be supported by an appropriate work program. If a State has only one urbanized area and the apportioned amount of funds exceeds that which the MPO and the State deem necessary, the MPO may allow the State, with the approval of the Federal Highway Administrator, to reallocate the excess to another urban area.

(b) The allocation formula shall consider, but not necessarily be limited to

population, status of planning, and metropolitan area transportation needs. If these factors are not inherent in the formula, the State must show that they have been adequately considered.

(c) PL funds are intended to supplement the expenditure of Highway Planning and Research (HP&R) funds, Urban Mass Transportation Administration section 8 funds and other Federal, State, and local funds for planning purposes in urbanized areas. They are not meant as a substitute for other planning funds, nor should it lead to withdrawal of other funds.

(d) As soon as practicable after PL funds are apportioned to the State, the State shall inform the MPO's and the Federal Highway Administrator of the amounts allocated to the MPO's.

**§ 450.304 Matching.**

The Federal share payable on account of work performed using PL funds shall be 80 percent. In those States where the rate of Federal participation for 1½ percent highway planning and research and development projects exceeds 80 percent as provided in 23 CFR Part 420, Subpart A, that rate may be applied to work performed using PL funds.

**§ 450.306 Programming of Metropolitan Planning Funds.**

(a) The expenditure of PL funds by each MPO shall be supported by the unified planning work program required by 23 CFR 450.114. For the States which do not have an urbanized area, an appropriate planning program shall be prepared for this purpose.

(b) The financial summary page of the unified planning work program shall, to the extent possible, include a separate line for the PL and matching funds, the HP&R funds (23 U.S.C. 307(c)(1)), the UMTA section 8 funds (49 U.S.C. 1607(a)), other Federal funds and the State and local funds financing the project.

(c) Where it is not possible to associate a particular planning activity with a particular fund, monthly expenditure reporting and progress claims for projects which are financed in part from one or more Federal Highway Administration funds may be based on

the percentage that each fund bears to the total funding of the unified planning work program.

(d) The State highway department as defined in 23 U.S.C. 101(a) shall be primarily responsible for administering metropolitan planning funds. The State shall do so pursuant to an agreement between the State highway department and the MPO. As a minimum, the agreement shall identify the parties involved; specify the purpose, statement of work, period of performance, consideration and payment, cost principles; grant the State the rights of access to, and examination and audit of records; and provide for retention of records.

(e) The provisions of 49 CFR 21, with respect to Title VI, Civil Rights Act of 1964, shall apply to projects utilizing PL funds.

**PART 460—PUBLIC ROAD MILEAGE FOR APPORTIONMENT OF HIGHWAY SAFETY FUNDS**

**Sec.**

460.1 Purpose.

460.2 Definitions.

460.3 Procedures.

**AUTHORITY:** 23 U.S.C. 315, 402(c); 49 U.S.C. 148.

**SOURCE:** 40 FR 44322, Sept. 26, 1975, unless otherwise noted.

**§ 460.1 Purpose.**

The purpose of this part is to prescribe the policies and procedures to be followed in identifying and reporting public road mileage for utilization of the statutory formula for the apportionment of highway safety funds under 23 U.S.C. 402(c).

**§ 460.2 Definitions.**

As used in this part:

(a) "Public road" means any road under the jurisdiction of and maintained by a public authority and open to public travel.

(b) "Public authority" means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality thereof, with authority to finance, build, operate or maintain toll or toll-free highway facilities.

(c) "Open to public travel" means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates.

(d) "Maintenance" means the preservation of the entire highway, including surfaces, shoulders, roadsides, structures, and such traffic control devices as are necessary for its safe and efficient utilization.

(e) "State" means any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa. For the purpose of the application of 23 U.S.C. 402 on Indian reservations, "State" and "Governor of a State" include the Secretary of the Interior.

#### 460.3 Procedures.

(a) *General requirements.* 23 U.S.C. 402(c) provides that funds authorized to carry out section 402 shall be apportioned according to a formula based on population and public road mileage of each State. Public road mileage shall be determined as of the end of the calendar year preceding the year in which the funds are apportioned and shall be certified to by the Governor of the State or his designee and subject to the approval of the Federal Highway Administrator.

(b) *State public road mileage.* Each State must annually submit a certification of public road mileage within the State to the Federal Highway Administration Division Administrator by the date specified by the Division Administrator. Public road mileage on Indian reservations within the State shall be identified and included in the State mileage and in computing the State's apportionment.

(c) *Indian reservation public road mileage.* The Secretary of the Interior or his designee will submit a certification of public road mileage within Indian reservations to the Federal Highway Administrator by June 1 of each year.

(d) *Action by the Federal Highway Administrator.* (1) The certification of Indian reservation public road mileage, and the State certifications of public road mileage together with comments thereon, will be reviewed by the Federal Highway Administrator. He will make a final determination of the public road mileage to be used as the basis for apportionment of funds under 23 U.S.C. 402(c). In any instance in which the Administrator's final determination differs from the public road mileage certified by a State or the Secretary of the Interior, the Administrator will advise the State or the Secretary of the Interior of his final determination and the reasons therefor.

(2) If a State fails to submit a certification of public road mileage as required by this part, the Federal Highway Administrator may make a determination of the State's public road mileage for the purpose of apportioning funds under 23 U.S.C. 402(c). The State's public road mileage determined by the Administrator under this subparagraph may not exceed 90 percent of the State's public road mileage utilized in determining the most recent apportionment of funds under 23 U.S.C. 402(c).

## PART 470—HIGHWAY SYSTEMS

### Subpart A—Federal-Aid Highway Systems

#### Sec.

- 470.101 Purpose.
- 470.103 Definitions.
- 470.105 System classification.
- 470.107 General procedures.
- 470.109 Specific system procedures.
- 470.111 Reclassifications, deletions, and reinstatements.
- 470.113 Proposals for system actions.
- 470.115 Approval authority.
- 470.117 Realignment schedule.

#### APPENDIX A—FLORIDA (NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS)

#### APPENDIX B—PRIMARY FEDERAL-AID SYSTEM

#### APPENDIX C—URBANIZED FEDERAL-AID URBAN SYSTEM

### Subpart B—[Reserved]

### Subpart C—Priority Primary Routes—Route Selection and Approval Procedures

- 470.301 Purpose.

Sec.

470.303 Definitions.

470.305 Route selection.

470.307 Route approvals.

## Subpart A—Federal-Aid Highway Systems

**AUTHORITY:** 23 U.S.C. 103(b)(2), 103(c)(2), 103(d)(2), 103(e)(1), 103(e)(3), 103(f), and 315; 49 CFR 1.48(b)(2) and (b)(35), unless otherwise noted.

**SOURCE:** 40 FR 42344, Sept. 12, 1975, unless otherwise noted. Redesignated at 41 FR 51396, Nov. 22, 1976.

### § 470.101 Purpose.

This regulation sets forth policies and procedures relating to the designation of the National System of Interstate and Defense Highways, the Federal-aid primary system, the Federal-aid secondary system, and the Federal-aid urban system after June 30, 1976.

### § 470.103 Definitions.

(a) Except as otherwise provided herein, terms defined 23 U.S.C. 101(a) are used in this regulation as so defined.

(b) As used herein:

(1) "Urban area" means an urbanized area, or in the case of an urbanized area encompassing more than one State, that part of the urbanized area in each such State, or an urban place as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible State and local officials in cooperation with each other. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census.

(2) "Rural area" means all areas of a State not included in the boundaries of urban areas.

(3) "Public road" means any road under the jurisdiction of and maintained by a public authority and open to public travel.

(4) "Rural arterial routes" means those public roads that are functionally classified as a part of the rural principal arterial system or the rural minor arterial system as described in

Volume 20, Appendix 12, Highway Planning Program Manual.<sup>1</sup>

(5) "Rural major collector roads" means those public roads that are functionally classified as a part of the rural major collector subclassification of the rural collector system as described in Volume 20, Appendix 12, Highway Planning Program Manual.

(6) "Urban arterial routes" means those public roads that are functionally classified as a part of the principal arterial system or the minor arterial system as described in Volume 20, Appendix 12, Highway Planning Program Manual.

(7) "Urban collector routes" means those public roads that are functionally classified as a part of the urban collector system as described in Volume 20, Appendix 12, Highway Planning Program Manual.

(8) "Appropriate local officials" means: (i) In urbanized areas, principal elected officials of general purpose local governments acting through Metropolitan Planning Organizations designated by the Governor, or (ii) In rural areas and urban areas not within any urbanized area, principal elected officials of general purpose local governments.

(9) For purposes of the above definition, the term "Governor" includes the Mayor of the District of Columbia and the term "Metropolitan Planning Organization" means that organization designated by the Governor being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as required by 23 U.S.C. 104(f)(3), and capable of meeting the requirements of 49 U.S.C. 1602(a)(2) and (e)(1), 49 U.S.C. 1603(a), and 49 U.S.C. 1604(g)(1) and (1). This organization is the vehicle for cooperative decisionmaking by principal elected officials of general purpose local governments.

(10) "Control area" as it pertains to the Interstate System, means a metropolitan area, city or industrial corridor, a topographic feature such as a mountain pass, a favorable local

<sup>1</sup>The Highway Planning Program Manual is available for inspection and copying as prescribed in 49 CFR, Part 7, Appendix

for a major river crossing, a road hub which would result in material traffic increments on the Interstate route, a place on the boundary between two States agreed to by the States concerned, or other similar point of significance.

#### § 470.105 System classification.

(a) The National System of Interstate and Defense Highways shall consist of routes of highest importance to the Nation, which connect as direct as practicable the principal metropolitan areas, cities, and industrial centers, including important routes into, through, and around urban areas, serve the national defense and, to the greatest extent possible, connect at suitable border points with routes of continental importance in Canada and Mexico.

(b) The Federal-aid primary system shall consist of an adequate system of connected main roads important to interstate, statewide, and regional travel, consisting of rural arterial routes and their extensions into or through urban areas.

(c) The Federal-aid secondary system shall consist of rural major collector routes.

(d) The Federal-aid urban system shall consist of arterial routes and collector routes, exclusive of urban extensions of the Federal-aid primary system.

#### § 470.107 General procedures.

(a) *Area classification.* (1) All areas of a State shall be classified as either rural or urban in accordance with the definitions in § 470.103(b) (1) and (2) of this regulation.

(2) Urban area boundaries shall be established in accordance with Volume 4, Chapter 6, Section 3 of the Federal-Aid Highway Program Manual.<sup>2</sup>

(b) *Functional classification.* (1) The routes of the Federal-aid primary, secondary, and urban system shall be designated on the basis of their anticipated functional usage.

(2) The State highway agency shall have the primary responsibility for initially developing and periodically updating a statewide highway functional classification to determine anticipated functional usage. The State shall cooperate with appropriate local officials, or appropriate Federal agency in the case of areas under Federal jurisdiction, in developing and updating the functional classification.

(3) The results of the functional classification shall be submitted to the Federal Highway Administration (FHWA) for approval and when approved shall serve as an official document for designation of Federal-aid systems. The State highway agency's submittal shall include highway maps showing the functional systems, statistics regarding the mileage extent of the functional systems, and a statement that the functional classification was developed in cooperation with appropriate local officials or appropriate Federal agency in the case of areas under Federal jurisdiction.

(c) *Designation of Federal-aid systems.* (1) The routes of the Interstate System to the greatest extent possible, shall be designated by the State highway agency or by joint action of the State highway agencies where the routes involve State-line connections. Interstate routes may be designated in both rural and urban areas.

(2) The routes of the Federal-aid primary system shall be designated by each State acting through its State highway agency. Federal-aid primary routes may be designated in both rural and urban areas.

(3) The routes of the Federal-aid secondary system shall be designated by each State acting through its State highway agency and appropriate local officials in cooperation with each other. No Federal-aid secondary route shall be designated in urban areas.

(4) The routes of the Federal-aid urban system shall be designated by appropriate local officials with the concurrence of the State highway agencies. The Federal-aid urban systems shall be designated in each urbanized area and such other urban areas as the State highway agency may designate. No Federal-aid urban

<sup>2</sup> The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR, Part 7, Appendix D.



system route shall be designated in rural areas.

(5) In urbanized areas, the designation of Federal-aid routes shall be in accordance with the planning process required pursuant to the provisions of 23 U.S.C. 134(a).

(6) In areas under Federal jurisdiction, the designation of Federal-aid routes shall be coordinated with the appropriate Federal agency.

(7) The modification or revision of Federal-aid systems shall be carried out in accordance with the above provisions for the designation of Federal-aid systems.

(d) *Extent of systems.* (1) The Interstate System shall not exceed 42,500 miles under the statutory provisions of 23 U.S.C. 103(e)(1) and 103(e)(3).<sup>3</sup>

(2) The Federal-aid primary, secondary, and urban systems do not have a statutory limit on designated mileage, but these systems are limited in extent to the functional arterial and collector routes prescribed in § 470.105 (b), (c), and (d) of this regulation.

(e) *Designation of partial systems.* Although the State highway agencies and appropriate local officials are encouraged to designate all routes eligible for Federal-aid system designation in the approved statewide functional classification, all of the eligible functional routes need not be designated as a part of the Federal-aid systems. Where this is the case, the designation of eligible functional routes should adhere to the following principles:

(1) In each system, routes should be designated on the basis of a planned connected system as specified in § 470.107(f).

(2) System mileage should be distributed on a reasonable and fair basis within the geographic area the system is designed to serve.

(f) *Integration of systems.* All Federal-aid systems shall be properly integrated with each Federal-aid route connected to another Federal-aid route.

<sup>3</sup>Although not included in this regulation, limited additions to the 42,500-mile Interstate System are permitted under the provisions of 23 U.S.C. 103(e)(2) and 139 (a) and (b).

(1) Interstate routes should connect to other Interstate routes at each end with the exception of Interstate routes that connect with continental routes at international boundaries or terminate in urban areas that are not served by another Interstate route. In the latter case, the terminus of the Interstate route should connect to routes of the Federal-aid primary or urban systems.

(2) Interstate spur routes may be justified in some instances such as connections to major cities, transportation terminals, defense centers, and industrial centers not directly served by the Interstate through route. Interstate spur routes may connect to routes of the Federal-aid primary or urban systems.

(3) Federal-aid primary routes should connect at each end to routes of the Federal-aid Interstate or primary systems with the exception of routes that connect at international boundaries or terminate in urban areas. In the latter case, the terminus of the Federal-aid primary route may also connect to routes of the Federal-aid urban system.

(4) Federal-aid primary spur routes may be justified in some instances such as connections to important cities, transportation terminals, defense centers, industrial centers, and recreational areas not directly served by the Federal-aid primary through route. Federal-aid primary spur routes may connect to routes of the Federal-aid secondary and urban systems.

(5) Where feasible, Federal-aid secondary routes should connect at each end to routes of the Federal-aid Interstate, primary, secondary, or urban systems.

(6) Federal-aid secondary routes should connect to other secondary routes at State and county line except in unusual circumstances where to do so may penalize or impose a hardship on a State or county.

(7) Federal-aid secondary stub routes are permissible as routes reach outward from other Federal-aid routes to serve traffic generators of intracounty importance.

(8) Where feasible, Federal-aid urban system routes should connect at each end to routes of the Federal-aid

Interstate, primary, secondary, or urban systems.

(9) Stub routes on the Federal-aid urban systems are permissible at urban area boundaries and as Federal-aid urban system routes reach out from other Federal-aid routes to directly serve major centers of urban activity as well as local traffic generators such as residential neighborhoods, transportation terminals, and commercial and industrial areas.

(10) Individual routes or clusters of routes in widely separated or remote areas of a State (as in Alaska), and on offshore islands, are permissible without connections to other segments of the system if the routes are otherwise justified.

(g) *Federal-aid route numbers.* A route number shall be assigned to each Federal-aid route. The route number shall not exceed four digits, but it may contain less than four digits.

(h) *Federal-aid system maps.* (1) All Federal-aid systems shall be delineated on county and urban areas maps.

(2) Each Federal-aid system shall be identified on the maps by different map symbol, and each Federal-aid route shall be identified by route number.

23 U.S.C. 315; 49 CFR 1.48(b))

40 FR 42344, Sept. 12, 1975. Redesignated

41 FR 51396, Nov. 22, 1976, and amended

43 FR 38384, Aug. 28, 1978]

#### § 470.109 Specific systems procedures.

(a) *Interstate system.* (1) Proposals for system actions on the Interstate system shall include a route description as illustrated in Appendix A.

(2) Proposals shall include a Federal-aid system map or maps, as prescribed in § 470.107(h) with the control areas and the affected Interstate routes marked thereon.

(3) Proposals should include a statement justifying control areas, a statement indicating agreement with adjoining States on State-line connections, and a statement providing total route mileage classified by rural and urban.

(4) Existing documentation in effect on June 30, 1976, for the Interstate system will remain effective on and after July 1, 1976. Proposals for

system actions on the Interstate System after June 30, 1976, will be in accordance with the provisions of this regulation.

(b) *Federal-aid primary system.* (1) Proposals for system actions on the Federal-aid primary system shall include a brief route description and related information as illustrated in Appendix B.

(2) Proposals shall include a Federal-aid system map or maps as prescribed in § 470.107(h).

(3) All routes on the Interstate System are a part of the Federal-aid primary system.

(c) *Federal-aid secondary system.* (1) Proposals for the Federal-aid secondary system shall include a brief route description and related information as illustrated in Appendix B.

(2) Proposals shall include a Federal-aid system map or maps as prescribed in § 470.107(h).

(d) *Federal-aid urban system.* (1) Proposals for the Federal-aid urban system shall include a table listing each route by number, name, termini, and related information as illustrated in Appendix C.

(2) Proposals for the Federal-aid urban system shall include a Federal-aid system map or maps, as prescribed in § 470.107(h) with the urban area boundaries delineated thereon.

(23 U.S.C. 315; 49 CFR 1.48(b))

40 FR 42344, Sept. 12, 1975. Redesignated at 41 FR 51396, Nov. 22, 1976, and amended at 43 FR 38384, Aug. 28, 1978]

#### § 470.111 Reclassifications, deletions, and reinstatements.

(a) The reclassification and redesignation of a Federal-aid highway route from one Federal-aid system to another Federal-aid system shall not relieve the State of its obligation to the Federal Government to maintain portions thereof constructed as Federal-aid projects or of any other obligation included in project agreements executed for Federal-aid projects on portions of that route. When controlled access Federal-aid primary routes are transferred to the Federal-aid secondary system, all access control features should be retained in force unless a re-

quest by the State to the contrary is approved by the FHWA.

(b) Federal Highway Administration approval of a deletion of a route from any Federal-aid system, without reclassification and redesignation to another Federal-aid system, shall relieve the State of its obligation to the Federal Government to maintain portions thereof constructed as Federal-aid projects with the exception of defense access-road projects constructed under the provisions of Volume 6, Chapter 9, Section 5 of the Federal-Aid Highway Program Manual. Such deletion shall also relieve the State of any other obligations included in project agreements executed for Federal-aid projects on portions of the deleted route.

(c) Requests for reinstatement of routes previously deleted from any Federal-aid system shall be approved by FHWA only when the State expressly agrees to resume its obligation for the maintenance of any portion of the route previously constructed as a Federal-aid project. Resumption of any other obligations included in project agreements executed for Federal-aid projects on the route being considered for reinstatement shall be mutually agreed to by the State and the FHWA.

**§ 470.113 Proposals for system actions.**

(a) The State highway agencies shall have the responsibility for proposing to the Federal Highway Administration all official actions regarding the designation, modification, or revision of Federal-aid highway systems.

(b) In justification of a proposed system action, the State highway agency shall include a statement that the proposed system action is in con-

formance with: (1) The system classification, general procedures, and specific procedures of this regulation; the requirements for participation with appropriate local officials; (3) in urbanized areas the planning process required pursuant to the provisions of 23 U.S.C. 134(a).

**§ 470.115 Approval authority.**

(a) The Federal Highway Administrator will approve system actions involving the designation, modification or revision of the Interstate System including control areas and route numbers.

(b) The Federal Highway Administration's Division Administrator approve the statewide functional classification and system actions involving the designation, modification, and revision of the Federal-aid primary, secondary, and urban systems.

**§ 470.117 Realignment schedule.**

The effective date for realignment of the Federal-aid primary, secondary and urban systems shall be July 1976.

**APPENDIX A—FLORIDA**

[National system of interstate and defense highway]

| FAI Route No. | Description                                                                                                                               |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| 10.....       | From the Florida-Alabama State line north of Pensacola via vicinity of Pensacola, Tallahassee, and Lake City to Route 95 in Jacksonville. |
| 95.....       | From Miami via vicinity of West Palm Beach, Daytona Beach, and Jacksonville to Florida Georgia State line north of Jacksonville.          |
| 110.....      | From FAI Route 10 north of Pensacola to enter into Pensacola.                                                                             |

NOTE: Mileage data are not to be shown on this

| Route Number |                                             |  | Route description and termini                                                                                                                                                                                                                                                                                                     | County                                                                                             | Mileage <sup>1</sup>                                                        |                                        |                                                                             |                             |
|--------------|---------------------------------------------|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|----------------------------------------|-----------------------------------------------------------------------------|-----------------------------|
| Fed. aid     | State or local                              |  |                                                                                                                                                                                                                                                                                                                                   |                                                                                                    | Rural                                                                       | Urban-ized                             | Small urban                                                                 | Total                       |
| 1            | S.R.1                                       |  | From the California-Nevada State line southwest of Verdi via Reno, Fernley, Lovelock, Winnemucca, Battle Mountain, Elko, and Wells to the Nevada-Utah State line at Wendover, Utah, with a spur from FAP Route 1 southerly along 17th St. to FAS Route 705 (Glendale Rd.) in Sparks. Approved Jan. 1, 1964, revised Dec. 7, 1964. | Washoe<br>Storey<br>Lyon<br>Churchill<br>Pershing<br>Humboldt<br>Lander<br>Eureka<br>Elko<br>Total | 41.5<br>2<br>16.3<br>27.7<br>75.0<br>61.3<br>26.8<br>26.4<br>131.3<br>406.5 | 5.4<br><br><br><br><br><br><br><br>5.4 | 46.9<br>2<br>16.3<br>27.7<br>75.0<br>61.3<br>26.8<br>26.4<br>134.5<br>415.1 |                             |
| 2            | C.R. and State Routes 2, 2a, 3, 19, and 24. |  | From the California-Nevada State line southwest of Glenbrook via Carson City, Dayton, Leeteville, Fallon, Austin, Eureka, and Ely to a junction with FA Route 1 near Wendover, Utah. Approved Jan. 1, 1964, revised July 27, 1967.                                                                                                | Churchill<br>Douglas<br>Elko<br>Eureka<br>Lander<br>Lyon<br>Ormsby<br>White Pine<br>Total          | 104.8<br>15.3<br>53.2<br>47.4<br>59.0<br>35.3<br>14.4<br>132.7<br>462.1     | <br><br><br><br><br><br><br><br>2.0    | 104.8<br>15.3<br>53.2<br>47.4<br>59.0<br>35.3<br>16.4<br>132.7<br>464.1     |                             |
| 3            | S.R. 3, 1, 70 and local road                |  | From the California-Nevada State line at Topez Lake via Minden to a point on FA Route 2 south of Carson City via Reno to the Nevada-California State line northwest of Reno, with a spur in Reno from FAM Route 3 via East Plumb Lane to the Reno Municipal Airport. Approved Jan. 1, 1964, revised Aug. 25, 1965.                | Douglas<br>Ormsby<br>Washoe<br>Total                                                               | 34.1<br>3.4<br>34.2<br>71.7                                                 | <br><br><br>6.9                        | <br>9.8<br><br>0.8                                                          | 34.1<br>4.2<br>41.1<br>79.4 |

<sup>1</sup> For routes extending into or through 2 or more counties, show the mileage separately for each county. Show grand total for the system on last sheet.

**APPENDIX C—URBANIZED FEDERAL-AID URBAN SYSTEM**  
 [State: Alpha. Urban Area: Beta.]

| Rte.<br>No. | Street name                                                      | Termini                                        |                                     | County      | Mileage <sup>1</sup> | Map No. <sup>2</sup> |
|-------------|------------------------------------------------------------------|------------------------------------------------|-------------------------------------|-------------|----------------------|----------------------|
|             |                                                                  | From                                           | To                                  |             |                      |                      |
| 7875        | Meridian St.....                                                 | Troy Ave. (S-141).....                         | Maryland St. (U-6399).....          | Marion..... | 3.3                  | 4                    |
| 7878        | 86th St., 82d St., and Shadeland Ave.....                        | Zionville Rd., (S-224), I-65, and 56th St..... | I-465 and 56th St. Interchange..... | do.....     | 1.1                  | 4                    |
| A879        | Fall Creek Parkway, East Dr. and 10th St.....                    | White River Parkway, West Dr. (U-6393).....    | Shadeland Ave. (U-6234).....        | do.....     | 3.2                  | 4                    |
| A999        | Stop 11 Rd., Connection to Southport Rd. and Shelbyville Rd..... | Southport Rd. (S-150).....                     | Franklin Rd. (S-149).....           | do.....     | .2                   | 6                    |
| 2010        | State Rd. 37.....                                                | 38th St. (F-3).....                            | I-465.....                          | Dover.....  | 1.7                  | 5                    |
| 7554        | CBD GRID.....                                                    |                                                |                                     | Marion..... | 2.0                  | 5, 6                 |
|             | Laurel St.....                                                   | North Harbor Dr.....                           | 6th Ave.....                        | do.....     | .6                   | 1                    |
|             | Hawthorn St.....                                                 | I-5.....                                       | 6th Ave.....                        |             | .6                   |                      |
|             | Grape St.....                                                    | I-5.....                                       | 6th Ave.....                        |             | .9                   |                      |
|             | Ash St.....                                                      | North Harbor Dr.....                           | 10th St.....                        |             | .9                   |                      |
|             | A St.....                                                        | Bethner Blvd.....                              | Park Blvd.....                      |             | .9                   |                      |
|             | B St.....                                                        | 4th St.....                                    | 18th St.....                        |             | 1.7                  |                      |
|             | C St.....                                                        | Front St.....                                  | 18th St.....                        |             | .8                   |                      |
|             | F St.....                                                        | Pacific Highway.....                           | 18th St.....                        |             | .9                   |                      |
|             | G St.....                                                        | Pacific Highway.....                           | 18th St.....                        |             | .9                   |                      |
|             | Front St.....                                                    | Market St.....                                 | 18th St.....                        |             | 1.3                  |                      |
|             | Bethner St.....                                                  | A St.....                                      | Ash St.....                         |             | .4                   |                      |
|             | 12th St.....                                                     | Market St.....                                 | East St.....                        |             | .9                   |                      |

<sup>1</sup> If route extends into more than 1 county, show mileage separately for each county. Show sum of route mileage on the last sheet for the urban area.

<sup>2</sup> For an urban area requiring 2 or more maps, show the map number(s) on which the route is located.

**Subpart B—[Reserved]****Subpart C—Priority Primary Routes—  
Route Selection and Approval Pro-  
cedures**

**AUTHORITY:** 23 U.S.C. 147 and 315; 49 CFR 1.48(b) (28) and (35).

**SOURCE:** 39 FR 37637, Oct. 23, 1974, unless otherwise noted.

**§ 476.301 Purpose.**

The purpose of this directive is to prescribe the procedures for selection and approval of priority primary routes.

**§ 476.303 Definitions.**

For the purposes of this subpart the following definitions apply: (a) "Priority Primary Routes" means high traffic sections of highways on the Federal-aid primary system which connect to the Interstate System and are selected for priority of improvement to supplement the service provided by the Interstate System by furnishing needed adequate traffic collector and distributor facilities.

(b) "Appropriate local officials" means (1) in rural and urban areas under 50,000 population, principal selected officials of general purpose local governments; or (2) in urbanized areas, principal elected officials of general purpose local governments (and until January 2, 1975, the Commissioner of the District of Columbia), acting through the metropolitan planning organization designated by the Governor.

**§ 476.305 Route selection.**

(a) The State highway department, in consultation with appropriate local officials, shall select priority primary routes.

(b) Priority primary routes shall connect to the Interstate System at one or more points either directly or in combination with another priority primary route. Priority primary routes shall satisfy all provisions of 23 U.S.C. 103(b)(1) regarding the existing Federal-aid primary system. After June 30, 1976, priority primary routes shall satisfy all provisions of 23 U.S.C. 103(b)(2) regarding realignment of the

Federal-aid primary system on the basis of anticipated functional usage.

**§ 476.307 Route approvals.**

The FHWA Division Administrator in each State is authorized to approve priority primary routes.

[41 FR 51396, Nov. 22, 1976]

**PART 476—INTERSTATE HIGHWAY  
SYSTEM****Subpart A—General****Sec.****476.2 Definitions****Subparts B—C—[Reserved]****Subpart D—Withdrawal of Interstate Segments  
and Substitution of Public Mass Transit or  
Highway Projects or Both****476.300 Purpose.****476.302 Applicability.****476.304 Withdrawal request.****476.306 Withdrawal approval.****476.308 Concept approval for substitute projects.****476.310 Proposals for substitute public mass transit and highway projects.****476.312 Combined proposal.****476.314 Administrator's review and approval of substitute projects.**

**AUTHORITY:** 23 U.S.C. 103(e)(2), 103(e)(4), 103(g), 103(h) and 315; 49 CFR 1.48(b) and 1.50(f).

**Subpart A—General****§ 476.2 Definitions.**

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this part as so defined.

(b) The following terms, where used in the regulations in this part, have the following meaning:

(1) "Base cost year" for the latest Interstate System cost estimate approved by Congress shall be the calendar year specified in the Interstate Cost Estimate Manual<sup>1</sup> for that esti-

<sup>1</sup>The "Instructional Manual for the Preparation and Submission of the (Year) Estimate of the Cost of Completing the Interstate System in Accordance with section 104(b)(5) of Title 23, U.S.C., Highways," published by the Federal Highway Adminis-

*Continued*

mate. For example, the base cost year for the 1972 estimate is 1970.

(2) "Concurrence" means written agreement which is currently binding on the concurring party and which addresses the specific proposal being submitted for approval.

(3) "Governor" means the Governor of any one of the fifty States and the Mayor of the District of Columbia. It also refers to any State or local entity specifically designated by the Governor for the purpose of executing any of his/her responsibilities under this part.

(4) "Interstate segment" means any designated, toll-free route, or portion thereof, of the Interstate System.

(5) "Local governments concerned" means local units of general purpose government under State law within whose jurisdiction the Interstate segment lies, or is to be withdrawn.

(6) "Open to traffic" means a segment which has been constructed or has had major improvements with Federal-aid Interstate funds and open to normal Interstate traffic; or a segment which was an existing freeway, meeting acceptable Interstate geometric standards and recognized as the final location of the route, when incorporated into the System. "Open to traffic" does not mean a segment of existing highway that is ultimately planned to be replaced by an entirely new facility.

(7) "Responsible local officials" means:

(i) In urbanized areas, principal elected officials of general purpose local governments acting through the Metropolitan Planning Organization in accordance with Part 450, Subpart A of this title, and;

(ii) In rural areas and urban areas not within any urbanized area, principal elected officials of general purpose local governments.

(8) "Substitute highway project" means any undertaking for highway construction, which may encompass phases of work including preliminary engineering, right-of-way, and actual construction, individually or any com-

bination thereof, on any of the Federal-aid systems described in 23 U.S.C. 103 and which is eligible for Federal financial assistance under title 23 U.S.C. A substitute highway project may include the construction of exclusive or preferential bus lanes, high occupancy vehicle lanes, highway traffic control devices, bus passenger loading areas and facilities (including shelters), and fringe and corridor parking facilities to serve bus and other mass transportation passengers. A substitute highway project may also include carpool and vanpool project incentives but not limited to, providing carpooling opportunities to the elderly and handicapped, systems for locating potential riders and informing them of convenient carpool opportunities, requiring vehicles appropriate for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use as preferential parking carpools.

(9) "Substitute nonhighway project" means any undertaking to develop or improve mass transit facilities or equipment in an urbanized area must be included in and related to the transportation improvement program required under 23 CFR 450.306. TIP in urbanized areas and all projects in nonurbanized areas must include either the construction of fixed route facilities, or the purchase of passenger equipment, or both. Passenger equipment includes buses, fixed rail rolling stock, and other transportation equipment for passenger use.

(10) "Under construction or under contract for construction" means funds for physical construction have been obligated (for highway projects) or have been included in an approved grant (for transit projects) which would commit the final development of the ultimate project in both location and scope. When projects do not involve physical construction, "under construction or under contract for construction" means the obligation of funds (for highway projects) or grant approval (for transit projects) has been incurred.

tration, U.S. Department of Transportation, is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

[45 FR 69396, Oct. 20, 1980]

**Subparts B-C—[Reserved]****Subpart D—Withdrawal of Interstate Segments and Substitution of Public Mass Transit or Highway Projects or Both**

Source: 45 FR 69397, Oct. 20, 1980, unless otherwise noted.

**§ 476.300 Purpose.**

The purpose of the regulations in this subpart is to prescribe policies and procedures for implementation of 23 U.S.C. 103(e)(4), which permits the withdrawal of Interstate System segments and the substitution of public mass transit or highway projects or both.

**§ 476.302 Applicability.**

(a) Except as provided in paragraph (b) of this section, this subpart applies to an Interstate segment at any stage of development if:

(1) The segment is within an urbanized area; or

(2) The segment passes through and connects urbanized areas within a State.

(b) The regulations in this subpart shall not apply to:

(1) A segment removed from the Interstate System prior to August 13, 1973;

(2) A segment added to the Interstate System after May 5, 1976, under the provisions of 23 U.S.C. 103(e)(2);

(3) Interstate segments designated under 23 U.S.C. 139;

(4) A toll bridge, tunnel, or approach thereto for which funds were advanced in accordance with 23 U.S.C. 24(b); or

(5) After September 30, 1979, an Interstate segment open to traffic before the date of the proposed withdrawal. If only a portion of an Interstate segment (between logical termini) is open to traffic the regulations of this subpart are applicable to the portion not open to traffic. The open to traffic portion will be removed from the Interstate System under 23 U.S.C. 103(f).

(6) Any segment added to the Interstate System by specific legislation unless a comparable statute permitting its withdrawal is enacted.

(7) A segment added to the Interstate System after August 13, 1973, under the provisions of 23 U.S.C. 103(e)(1).

(c) Withdrawal requests may not be approved under this subpart after September 30, 1983, unless the route segment was under a court injunction prohibiting its construction as of November 6, 1978. For segments under such injunction, withdrawal requests may not be approved under this subpart after September 30, 1986. However, as indicated in § 476.310(g), the September 30, 1986, substitute project construction time limitation remains applicable to these segments.

[45 FR 69397, Oct. 20, 1980, as amended at 46 FR 45603, Sept. 14, 1981]

**§ 476.304 Withdrawal request.**

(a) A request to withdraw an Interstate segment within a State under this subpart shall be submitted jointly by the Governor and local governments concerned. For those segments within urbanized areas, the concurrence of responsible local officials is also required. The withdrawal request shall be submitted to the Federal Highway Administrator and the Urban Mass Transportation Administrator, through the Federal Highway Administrator.

(b) Joint submittal may be accomplished by a single request prepared by the Governor and concurred in by the local governments concerned. This may also be accomplished by a request by the Governor with separate concurrence documentation by the local governments concerned. In either case, for those segments within urbanized areas, the concurrence of responsible local officials is also required. While unanimous local action is not required, the withdrawal request is expected to have substantial support.

(c) The request for withdrawal shall include the following:

(1) A statement that the request is filed pursuant to 23 U.S.C. 103(e)(4).



(2) Reasons why the segment is not essential to the completion of a unified and connected Interstate System.

(3) A detailed statement of mileage and cost of the segment to be withdrawn as included in the latest Interstate cost estimate approved by Congress.

(4) An assurance that a toll road will not be constructed in the traffic corridor which would be served by the segment.

**§ 476.306 Withdrawal approval.**

(a) The Federal Highway Administrator and the Urban Mass Transportation Administrator may approve the withdrawal of an Interstate segment under the provisions of this subpart after considering the impact of the withdrawal on national defense needs if:

(1) The requirements of § 476.304 are met; and

(2) The Federal Highway Administrator determines that the segment is not essential to completion of a unified and connected Interstate System.

(b) When the withdrawal of an Interstate segment is approved under paragraph (a) of this section, an amount equal to the Federal share of the cost to complete the withdrawn segment as shown in the latest Interstate System cost estimate approved by Congress is authorized for substitute projects. The amount authorized will be increased or decreased, as determined by the Federal Highway Administrator, based on changes in construction costs of the withdrawn route occurring between the base cost year of the latest cost estimate approved by Congress which included the costs of the withdrawn route and the date of approval of each substitute project. The changes in construction costs will be computed on the basis of the Composite Index shown in the quarterly publication "Price Trends for Federal-Aid Highway Construction."<sup>1</sup> For purposes of cost adjustments, the Composite Index for the calendar quarter within which the approval of the sub-

stitute project occurs will be used in computing the change in construction costs.

(c) Authorizations of funds made available by the withdrawal of an Interstate route under 23 U.S.C. 103(e)(4) shall remain available until expended within the limitations prescribed in § 476.310 (f) and (g).

(d) Effective as of date of approval of the withdrawal of an Interstate segment, the unobligated apportionment for the Interstate System of the State receiving the approval will be reduced in the proportion that the Federal share of the cost of the withdrawn segment bears to the Federal share of the total cost of all Interstate routes in the State as reported in the latest Interstate System cost estimate approved by Congress.

(e) Mileage withdrawn under the provisions of this subpart may not be redesignated in any State under a provision of Title 23, U.S.C.

(f) The payback of Federal-aid Interstate funds expended on a segment withdrawn under this subpart shall be governed by 23 CFR Part 480, Use and Disposition of Property Acquired by States for Modified or Terminated Highway Projects.

(g) Segments withdrawn under the provisions of this subpart may not be redesignated under the provisions of 23 U.S.C. 139.

**§ 476.308 Concept approval for substitute projects.**

(a) A concept program which identifies the proposed substitute project to be approved in concept and which, as a minimum, accounts for all unobligated funding made available by this subpart must be submitted as soon as practicable after the effective date of this subpart or after a withdrawal is formally approved.

(1) The substitute project concept included in the program must be selected in a manner consistent with the procedures provided in § 476.310(b) and (c).

(2) The concept program submission must contain:

(i) A proposed split, if any, of Interstate withdrawal authorizations between transit and highway projects;

<sup>1</sup> Published by FHWA, Interstate Reports Branch, and available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

(ii) A concept description (e.g., type of work, termini, length, estimated cost, number and type of vehicles, size and type of facility, identification of major transportation investment, etc.) of the proposed transit and/or highway projects for which concept approval is requested; and

(iii) A summary of the anticipated level of overall funding needs by individual fiscal year, as estimated on a general transit and/or highway basis.

(3) The concept program shall be endorsed by the Governor and the responsible local officials.

(4) The concept program should be submitted by the Governor to the Federal Highway Administrator and the Urban Mass Transportation Administrator, through the Federal Highway Administrator.

(b) Approval of substitute project concepts must be given jointly by the Federal Highway Administrator and the Urban Mass Transportation Administrator by September 30, 1983. This time limitation does not apply to projects which were under court injunction prohibiting construction as of November 6, 1978.

(1) Adjustments and refinements to previously approved project concepts may be permitted after September 30, 1983.

(2) Approval of the project concepts does not commit funding under this part nor does such approval constitute an obligation on the State or local governments to fully implement the project concepts. Approval of a project concept is processed as a categorical exclusion under 23 CFR Part 771.

§ 476.310 Proposals for substitute public mass transit and highway projects.

(a) The proposed substitute projects must serve the urbanized area or containing nonurbanized area corridor, or which, from which the Interstate segment was withdrawn.

(b) Substitute projects in or serving urbanized areas shall be based on an urban transportation planning process in accordance with 23 CFR Part 450, Subpart A (and policies and regulations pertaining thereto), and shall be selected by the responsible local officials of the urbanized area in accordance with 23 CFR Part 450, Subpart C.

Substitute projects located outside but serving the urbanized area shall also have the concurrence of the responsible local officials of the jurisdiction in which the project is located.

(c) Substitute projects in or serving the nonurbanized area corridor shall be selected by the responsible local officials of the nonurbanized area corridor. Substitute projects located outside but serving the nonurbanized area corridor shall also have the concurrence of the responsible local officials of the jurisdiction in which the project is located.

(d) Applications for substitute non-highway public mass transit projects shall be developed either by the principal elected officials of general purpose local units of government in consultation with local transit officials or by local transit officials. Substitute highway projects shall be developed in accordance with the policies and procedures established for the Federal-aid highway system of which they will be a part. Substitute highway projects need not appear in the statewide Federal-aid program described in 23 CFR Part 630, Subpart A.

(e) Applications for substitute non-highway public mass transit projects are submitted to the Urban Mass Transportation Administrator by the Governor. Requests for authorization to proceed with substitute highway projects are submitted to the Federal Highway Administrator by the Governor.

(f) After September 30, 1983, only applications for those substitute projects which have previously received concept approval under § 476.308 should be submitted.

(g) Substitute projects (for which sufficient funds are available) must be under construction or under contract for construction by September 30, 1986. This time limitation is applicable to all substitute projects, including those related to Interstate segments which were under court injunction prohibiting construction on November 6, 1978. Approval for substitute projects not meeting this requirement will be withdrawn or not issued, and no funds will be appropriated or authorized for these projects.

**§ 476.312 Combined proposal.**

A proposal for one or more substitute projects may be combined with projects utilizing other Federal funds available including, but not limited to, financial assistance available under either the Urban Mass Transportation Act of 1964, as amended, or 23 U.S.C. 104. Only the funds available from a withdrawal under this subpart are constrained by the limiting amount described in § 476.306(b).

**§ 476.314 Administrator's review and approval of substitute projects.**

(a) The Urban Mass Transportation Administrator shall review substitute nonhighway public mass transit projects and the Federal Highway Administrator shall review substitute highway projects to determine that the projects meet the following requirements.

(1) The proposed projects serve the urbanized area or connecting nonurbanized area corridor or both from which the Interstate segment was withdrawn.

(2) The Federal share of the costs of the proposed projects which is to be provided under this subpart by virtue of the withdrawal of an Interstate segment does not exceed the Federal share of the cost of the withdrawn segment, as determined in § 476.306(b).

(b) Approval of substitute projects can be given only to the extent that authority to obligate the funds is available.

(c) For substitute nonhighway public mass transit projects, the approval of the plans, specifications, and estimates of a project, or any phase thereof, shall be deemed to occur on the date the Urban Mass Transportation Administrator approved the substitute project or phase thereof in accordance with the policies and procedures established for the UMTA section 3 capital grant program.

(d) Substitute highway projects will be approved by the Federal Highway Administrator in accordance with policies and procedures established for the Federal-aid highway program.

(e) Approval of a substitute project or phase thereof obligates the United States to pay its proportional share of the cost of the project or phase there-

of out of the general funds in Treasury.

(f) The Federal share for substitute projects approved after November 1978, shall not exceed 85 percent notwithstanding the Federal share nonhighway public mass transit projects established under the Urban Mass Transportation Act of 1964, as amended, and highway projects under Title 23, U.S.C.

(g) The labor protective provisions of section 3(e)(4) of the UMTA Act of 1964, as amended, (49 U.S.C. section 1602(e)(4)) are applicable to nonhighway public mass transit projects funded under the provisions of this subpart.

**PART 480—USE AND DISPOSITION OF PROPERTY ACQUIRED BY STATES FOR MODIFIED OR TERMINATED HIGHWAY PROJECTS**

**Sec.**

480.101 Purpose.

480.103 Applicability.

480.105 Definitions.

480.107 Use of real property for other purposes.

480.109 Other dispositions of real property.

480.111 Disposition and use of tangible personal property.

480.113 Use of credits to Federal funds.

480.115 Relocation assistance.

480.117 Property management.

480.119 Intangible items of cost.

**AUTHORITY:** Pub. L. 95-599, 92 Stat. (23 U.S.C. 103(e) (5), (6)); Pub. L. 85-711, 91 Stat. 915 (23 U.S.C. 315); 49 CFR 1.101, Office of Management and Budget Circular A-102, attachment N (August 24, 1977).

**SOURCE:** 43 FR 54077, Nov. 17, 1978, unless otherwise noted.

**§ 480.101 Purpose.**

The purpose of the regulations in this part is to prescribe standards for the use and disposition of property acquired by States with the participation of Federal-aid highway funds in the highway project for which the property was acquired is modified or terminated, such that the property is no longer needed for the purposes of the highway project.

## § 480.103 Applicability.

(a) The regulations in this part are applicable to the use and disposition of property acquired with the participation of Federal-aid highway funds for any project on any Federal-aid system which has not been closed by the payment of a final voucher as of the effective date of this part when, because of the modification or termination of the project, the property is no longer needed for purposes of the highway project. With the exceptions stated in paragraphs (b) and (c) of this section, these regulations apply to any use or disposition made of such property, whenever it was acquired, after the effective date of this part.

(b) This part does not apply to portions of highway rights-of-way covered by Subpart C of 23 CFR Part 713.

(c) The provisions of §§ 480.107 and 480.111 of this part for the reuse of property without the requirement of a credit to Federal funds do not apply to property which has not been applied to a reuse under this part within 10 years of the modification or termination of the highway project in connection with which it was acquired.

(d) Nothing in this part shall be construed to affect or conflict with the obligations of States with respect to advance acquisition of right-of-way pursuant to 23 U.S.C. 108(c).

## § 480.105 Definitions.

The following definitions apply for purposes of this part:

*"Applied to a reuse under this part"* means committed, as determined by the Administrator, to a reuse under § 480.107 or § 480.111 of this part;

*"Intangible items of cost"* means items having no physical existence or coverable value, such as preliminary engineering or overhead;

*"Real property"* means land, and interests therein, including improvements, structures and appurtenances thereto, but excluding movable equipment and machinery;

*"Tangible personal property"* means any property, other than real property, having a physical existence, such as construction items, materials and equipment.

## § 480.107 Use of real property for other programs.

(a) When real property is no longer needed for the highway project for which it was acquired, because of the modification or termination of the project, the State may, subject to the provisions of this section, reuse the property without being required to make a credit to Federal funds for:

(1) A project under another Federal grant program, or

(2) A project under any State or local program the purposes of which are consistent with a program or programs authorized for support by the U.S. Department of Transportation. State and local transportation projects (except projects for toll roads), projects for public recreation or conservation purposes, programs for the restoration and revitalization of urban or rural areas, and other programs consistent with the public interest shall be deemed consistent with Department of Transportation programs for the purposes of this subsection.

(b) In order to reuse real property without being required to make a credit to Federal funds, the State shall submit to the Federal Highway Administrator the following information:

(1) A certification that property acquired after the effective date of these regulations was acquired with the intent, at the time of acquisition, of using it for highway purposes;

(2) A finding that the property is no longer needed for purposes of the highway project for which it was acquired;

(3) An explanation of the grounds for the finding;

(4) A description of the program for which the State proposes to use the property. In the case of a State or local program, the description shall include a justification of the program in terms of consistency with DOT programs. Each description shall also indicate whether any of the property involved will be transferred to any private party in connection with the proposed program. The State shall justify to the Administrator the necessity in the public interest for any transfer, without a requirement for a credit to Federal funds, to a private party;

(5) A certification that all reviews, approvals or concurrences by State, regional or local officials or planning organizations required under law for the proposal have been obtained, and that the State has consulted with and sought the comments of the State Historic Preservation Officer in the case of any proposed reuse which affects historic resources on or eligible for inclusion in the National Register of Historic Places;

(6) A certification that the rights under State law of persons owning property in the right-of-way immediately prior to such property being obtained by the State have been observed;

(7) A certification that the methods to be used to dispose of the property and the proposed substitute use for the property are in all other respects consistent with State law;

(8) An assurance that the approved reuse will be made expeditiously and that no major alteration in the proposed reuse will be made without the consent of the Administrator; and

(9) Any additional information requested by the Administration.

(c) Based on this submission, the Administrator shall determine whether or not the State is required to make a credit to Federal funds.

(d) The Administrator shall require a credit to Federal funds with respect to property the proposed reuse of which:

(1) Is inconsistent with any Federal statute;

(2) Involves property concerning which the certifications, findings and assurances required by paragraph (b) of this section are not made;

(3) Proposes to use the property, or its value, to form part of the State or local matching share with respect to any Federal program; or

(4) Proposes to transfer the property to any private party, unless the Administrator determines that such transfer, without a requirement for a credit to Federal funds, is necessary in the public interest.

(e) If the Administrator determines that the assurance required by paragraph (b)(8) of this section has not been observed, the Administrator may revoke his determination not to re-

quire a credit to Federal funds direct the State to dispose of the property as provided in §§ 480.109 480.111(b) of this part.

#### § 480.109 Other dispositions of real property.

(a) When real property is no longer needed for purposes of the highway project for which it was acquired, the Administrator has determined under § 480.107 of this part that a credit to Federal funds is required, the State shall apply to the Administrator for disposition instructions. The Administrator shall instruct the State to dispose of the property in one of the following ways:

(1) Retain title to the property, credit Federal funds in an amount computed by applying the Federal percentage of participation in the cost of the original acquisition to the current fair market value of the property;

(2) Sell the property, and credit Federal funds in an amount computed by applying the Federal percentage of participation in the cost of the original acquisition to the sale proceeds (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). The State shall employ proper sales procedures which, unless otherwise provided by the Administrator, provide for competition to the maximum extent practicable and result in the highest possible return. The Administrator may require sales under this provision to be conducted according to guidelines provided by the Administrator.

#### § 480.111 Disposition and use of tangible personal property.

(a) When a State no longer needs tangible personal property acquired in connection with a modified or terminated Federal-aid highway project, the State shall use the property in connection with its other federally-sponsored activities in the following order of priority:

(1) Activities sponsored by the Department of Transportation;

(2) Activities sponsored by other Federal agencies.

(b) When the State no longer needs or cannot use the property as provided

in paragraph (a) of this section, the property may be disposed of or used according to the following standards:

(1) The State may use for any purpose or sell property with a project cost of less than \$1,000 without making a credit to Federal funds.

(2) The State may use for any purpose or sell property with a project cost of \$1,000 or more, after a credit to Federal funds in an amount computed by applying the Federal percentage of participation in the cost of its original acquisition to the sale proceeds. When the State sells property, it shall do so in a manner which maximizes competition and the return from the sale. The State shall be permitted to deduct its share from the Federal share \$100 or 10 percent of the proceeds, whichever is larger, for selling and handling expenses.

#### § 480.113 Use of credits to Federal funds.

Credits made to Federal funds pursuant to §§ 480.109 and 480.111(b) of this part shall be credited to the State's Federal-aid apportionment to which the original acquisition of the property was attributable, in the manner set forth in 23 U.S.C. 118(b).

#### § 480.115 Relocation assistance.

With respect to owner-occupants, tenants, businesses, and farm operations whose property has been acquired in connection with a federally assisted highway project, who are still occupancy, and who could have qualified as displaced persons if they had moved prior to the date of modification or termination, the obligations of the Federal Highway Administration under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601 et seq.) shall continue for that period of time after the date of modification or termination as is considered equitable by the Administrator, but in no event shall this period extend beyond the date the State sells or otherwise disposes of the property. If the Administrator determines under § 480.107 of this part that no credit to Federal funds is required, the State shall assure the Administrator that it or the Federal agency granting assistance to the substitute program will assume

these obligations after the Administrator's approval with respect to any such persons, businesses, or farm operations displaced as a result of the original acquisition or reuse of the former highway property.

#### § 480.117 Property management.

Rules or standards of property management normally applicable to property obtained with the participation of Federal-aid highway funds shall continue to apply to the management of property acquired by States in connection with a highway project after the modification or termination of the project. These rules or standards shall cease to apply to the property as of the date of a determination by the Administrator that no credit to Federal funds is necessary for a reuse of real property, upon the reuse of tangible personal property for another Federal program, or on the date the State sells or otherwise disposes of the property. FHWA may in the discretion of the Administrator participate in the costs of property management and in other costs related to the acquisition of the property or the modification or termination of the highway project that are incurred before such dates.

#### § 480.119 Intangible items of cost.

States are not required to make a credit to Federal funds with respect to any intangible items of cost upon which the State expended Federal-aid highway funds in connection with a project which was modified or terminated.

## PART 490—SPECIAL PROGRAMS

### Subpart A—Economic Growth Center Development Highways

#### Sec.

- 490.101 Purpose.
- 490.103 Definitions.
- 490.105 Applicability.
- 490.107 Implementation.
- 490.109 Financing.
- 490.111 Criteria.

### APPENDIX A—CRITERIA FOR SELECTION AND APPROVAL OF ECONOMIC GROWTH CENTER HIGHWAYS AND DEVELOPMENT HIGHWAY PROJECTS

AUTHORITY: 23 U.S.C. 143, 315; 49 CFR 1.48(b) (26) and (35).

SOURCE: 39 FR 35142, Sept. 30, 1974, unless otherwise noted.

### Subpart A—Economic Growth Center Development Highways

#### § 490.101 Purpose.

The purpose of this subpart is to prescribe policies and procedures for administering the Economic Growth Center Development Highway Program by furnishing specific procedures, criteria, and definitions needed to assist State Governors, State highway officials, and Federal Highway Administration headquarters and field staffs in implementing the program.

#### § 490.103 Definitions.

(a) The term "Commuting range" means that distance from a growth center from which residents of rural counties can commute daily, with reasonable convenience, to work or other opportunities in the growth center.

(b) The term "Development Highway Projects" means a project on an economic growth center development highway approved by the Federal Highway Administrator for construction, reconstruction, or other improvement with funds authorized under provisions of 23 U.S.C. 143.

(c) The term "Division Administrator" means the chief Federal Highway Administration (FHWA) official assigned to conduct FHWA business in a particular State, the District of Columbia, or the Commonwealth of Puerto Rico.

(d) The term "Economically capable" means the economic capability of an area to be designated as an economic growth center. A determination that a proposed growth center is economically capable will rest primarily upon past economic performance of the area and upon its future potential.

(e) The term "Economic development" means economic development of an area as evidenced by increments in total income, employment opportunities, populations, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employ-

ment, higher wage levels, and/or gains in other measures of economic activity, such as land values.

(f) The term "Economic Development District" means a group of adjacent counties or areas, including a growth center, grouped together under a program authorized by Congress and designated by the Economic Development Administration.

(g) The term "Economic Development Plan" means a formal attempt to bring order, priority, and foresight into government and private expenditures.

(h) The term "Economic Growth Center" means a center of less than 100,000 population approved by the Secretary on the basis of recommendations of the Governor of the State.

(i) The term "Economic Growth Center Development Highway" means a highway on any Federal-aid system except the Interstate System which meets the requirements established in 23 U.S.C. 143 and is approved by the Secretary of Transportation for construction, reconstruction, or improvement under the provisions of that section.

(j) The term "Geographically capable" means the ability of an area surrounding a proposed growth center to provide area residents, and residents of the growth center, the opportunity with reasonable convenience, to commute to or from the center to employment or to other public and private services available in the area.

(k) The term "Public and private services" means such services providing health care, transport, education, legal, employment, recreational, cultural, and other similar services available to the public.

(l) The term "Redevelopment area" means a county, Indian reservation, or other definable area designated by the Economic Development Administration under a program authorized by Congress to attempt to solve problems caused by high unemployment and low median family income levels.

#### § 490.105 Applicability.

(a) The Federal-Aid Highway Act of 1973 continued the Economic Growth Center Development Highway Program.

plan, but modified it in three important respects:

(1) 23 U.S.C. 143(a) was amended to eliminate the "demonstration" feature, thereby indicating a congressional intent to make the growth center provision an element of the overall Federal-aid highway program;

(2) The 20 percent add-on or "sweetener" financing provision of the Federal-Aid Highway Act of 1970 was eliminated and authorizations for the FY 1975, and 1976 fiscal years were added (in section 104(a)(10)) to provide the same Federal share payable as for any other project on the Federal-aid system on which the development highway is located; and

(3) The program was broadened to include projects on any Federal-aid system except the Interstate System.

(4) This directive applies to all development highway projects under provisions of Title 23 U.S.C. 143.

#### 490.107 Implementation.

(a) Highway projects to serve economic growth centers shall be approved by the Division Administrator according to ordinary Federal-aid procedures, provided the Division Administrator is satisfied that the project has a reasonable likelihood of improving the economic and social performance of the growth center.

(b) Economic growth centers approved under 23 U.S.C. 143 prior to issuance of this directive shall be continued as active centers in the new program until they are replaced by new centers in accordance with 490.107(c).

(c) New highway projects selected to continue improvement of previously approved centers are eligible for immediate approval by the Division Administrator provided he is satisfied that the project has a reasonable likelihood of improving the economic and social performance of the growth center.

(d) New economic growth centers shall be recommended by the Governors of the several States in addition to existing centers. However, no State shall have more than three currently active growth centers. New centers shall be recommended to replace centers for which funds have been fully obligated for all approved projects, or

for which no projects have been initiated. Governors shall submit their recommendations to the Regional Federal Highway Administrator through their State highway agencies.

(d) A Governor's recommendation for a new economic growth center shall be accompanied by economic and demographic data supporting his suggestions and explaining why and how additional highway investment might assist in further developing the potential of the area. Criteria listed in Appendix A of this subpart must be considered by the Governors in recommending growth centers.

(e) Regular Federal-aid procedures applicable to the system on which a project is located shall be used, except as modified in this subpart.

[39 FR 35142, Sept. 30, 1974, as amended at 42 FR 7137, Feb. 7, 1977; 46 FR 42266, Sept. 14, 1981]

#### § 490.109 Financing.

(a) Section 104(a)(10) of the Federal-Aid Highway Act of 1973 authorizes appropriations out of the Highway Trust Fund to finance the Economic Growth Center Development Highway Program. In addition, unobligated balances remaining from the demonstration program are available for use in the new program.

(b) The requirement in the Federal-Aid Highway Act of 1970 that "the Federal share of the cost of any project for construction, reconstruction, or improvement of a development highway under this section shall be increased by not to exceed an additional 20 per centum of the cost of such project, except that in no case shall the Federal share exceed 95 per centum of the cost of such project" shall continue to apply to all projects under 23 U.S.C. 143 for which plans, specifications and estimates were approved prior to the enactment of the Federal-Aid Highway Act of 1973 (August 13, 1973) until such projects are completed. The Federal share of the cost of any project for construction, reconstruction, or improvement of a development highway under 23 U.S.C. 143 for which plans, specifications and estimates were or are approved subsequent to enactment of



the Federal-Aid Highway Act of 1973 shall be the same as the Federal share payable for the Federal-aid system on which such development highway is located.

(c) Federal-aid funding from two or more Federal-aid highway programs may occur but the Federal share for each must be in accordance with 23 U.S.C. 120.

[39 FR 35142, Sept. 30, 1974, as amended at 42 FR 7138, Feb. 7, 1977]

#### § 490.111 Criteria.

In accordance with 23 U.S.C. 143(f), criteria have been developed to aid Governors in recommending economic growth centers to the Federal Highway Administrator. All criteria are detailed in Appendix A of this subpart and will be utilized by Regional Administrators in their determination as to whether growth centers recommended by the Governors meet the criteria of the act. These criteria also will be used to guide the selection of individual projects to serve the growth centers.

#### APPENDIX A—CRITERIA FOR SELECTION AND APPROVAL OF ECONOMIC GROWTH CENTER HIGHWAYS AND DEVELOPMENT HIGHWAY PROJECTS

*Requirements for Governors' Submittal to the Regional Federal Highway Administrators.* In order to meet the requirements of 23 U.S.C. 143, the Secretary has established through the Federal Highway Administration and in consultation with the Secretary of Commerce and the regional commissions,<sup>1</sup> the following criteria that must be considered by the Governors in recommending growth centers and in establishing a priority listing.

*A. Legislative Criteria for Economic Growth Center Selection.* 1. Growth centers shall be geographically and economically capable of contributing significantly to the development of the surrounding areas.

2. Growth centers shall have a population not in excess of 100,000 according to the 1970 Federal Census of Population; and

3. The selection of growth centers within the Appalachian region and in the economic

development regions, shall take into account the purposes of the Appalachian Regional Development Act of 1965 and the Public Works and Economic Development Act of 1965.

*B. Administrative Criteria for Economic Growth Center Selection.* Listed below are additional criteria or guidelines to be used by Governors, in consultation with the highway departments, and regional development commissions and development planning agencies, when appropriately directed their attention when recommending economic growth centers for selection. Because of the many objectives of 23 U.S.C. 143, recommended centers need not be limited necessarily to any single administrative criterion. Centers could include communities with either demonstrated or potential viability.

1. To obtain maximum development from economic growth center funds, they are encouraged to concentrate on approved projects serving growth centers as part of the demonstration phase of the program.

2. In recommending new or substituting economic growth centers, Governors shall give top priority to areas included in existing regional development programs. Consideration shall also be given to local development districts established by State action under the Appalachian Regional Commission.

a. By giving special consideration to the selection process to growth centers developed under programs which have already received or which are slated to receive substantial amounts of public and private investments, a leverage effect on development potential will be exerted.

b. Proper channels of communication should be observed by the State highway agencies with such other regional and local commissions and agencies involved under the terms of Title 23 U.S.C. 143. 23 U.S.C. 143(f) requires the Secretary of Transportation, prior to project approval, to consult with the Federal Chairman of the Appalachian Regional Commission when a project is proposed to be carried in the Appalachian region, as defined in section 403 of the Appalachian Regional Development Act of 1965, and with the Secretary of Commerce when a project is proposed in an economic development region as defined in Title V of the Public Works and Economic Development Act of 1965. In fulfillment of this requirement, the States, when submitting growth center projects for approval, shall include in their submissions a statement of the attitudes and reactions of the above agencies.

3. Communities or centers also may be recommended for selection even though they are not included in ongoing regional

<sup>1</sup>Regional Commissions refer to the Appalachian Regional Commission and the commissions established under Title V of the Public Works and Economic Development Act of 1965.

opment programs if they offer possibilities for growth through natural resource development or other industrial or commercial activities. Prospective growth centers possessing the following attributes will merit special consideration because of demonstrated viability:

a. Centers which provided during the past decade, or in a more recent period, significant employment and residence opportunities for residents from nearby or surrounding rural counties.

b. Centers or communities which have been growing in a relative sense to the surrounding area or region; i.e., centers which during the past decade, or in a more recent period, evidenced high average wage levels or faster population and/or employment growth relative to surrounding rural counties and/or the region.

c. Communities which evidence *potential* viability based on private and public plans and data submitted, also may be recommended. It is conceivable that some communities may have shown little or even no growth over the past decade, but have definitely served an important function as a service and employment center for the surrounding rural areas and have inherent but untapped growth potential. Had this role not been played by the recommended center, the surrounding counties, though possibly stagnant during recent decades, might have suffered even further decline in economic performance. If such a role will likely continue into the future, or if prospects are favorable for future growth because of industry location plans and governmental investment, such communities may be recommended as economic growth centers. Data on such further prospects should be forwarded by the respective Governors together with data on boundaries of operationally defined service or trade areas, measured, perhaps, by newspaper routes, commuting patterns, or labor market boundaries.

d. The ability to support future growth may be integrally related to the diversification of the economic base of a community. Such diversification would be indicated by a wide variety of manufacturing or service industry activities (as measured, for instance, by the proportion of the total work force employed in each of the activities, or by the proportion of total income earned in each of the activities) providing goods and services to both local and regional or national markets.

e. A community's viability may also be indicated by the availability of existing or planned alternative transportation systems

including publicly owned airport and water-port facilities.

f. Other indicators of the capability of proposed growth centers include, but are not limited to:

(1) Availability of adjacent land suitable for industrial commercial development,

(2) Availability of adequate water resources for human, industrial, and commercial consumption, and

(3) Utilities, schools, and other public services adequate to meet the community's current and future needs.

4. Consideration should be given to new towns or communities in rural settings. Such communities may also be eligible for financial and other assistance for highway projects under Section 710 of the Housing and Urban Development Act of 1970. Additionally, newly developed communities may be used for the testing and development of technological, physical, and institutional innovation applicable to other communities and areas. New towns which are satellite or bedroom communities of metropolitan areas are not the types of communities to which this legislation is addressed.

C. *Other Requirements.* 1. *Proposed* growth centers including an urban area of 50,000 population or more shall meet the requirements for urban transportation planning specified in Title 23, U.S.C. 134.

2. When recommending centers for approval Governors should submit summaries of any formal private or public plans related to the economic and social development of a proposed growth center and surrounding areas, if these have been developed. The availability of such a plan is not mandatory, although existence of a formal economic development planning process indicates the extent of community and regional interest in development. When such plans are unavailable, Governors shall submit relevant social and economic data to support their rationale for selection. Such data should illustrate the present condition of the center and target areas, major impediments to development; present intermodal transportation facilities and their linkages to the growth center, markets, the rural hinterland, and the overall transportation, network; and the possible impact upon the area and region resulting from more adequate transportation connections. Estimates of the expected impact of the highway program in conjunction with the public and private programs are important in determining priorities for growth center selection and approval.

[40 FR 2581, Jan. 14, 1975]

## SUBCHAPTER F—RESEARCH AND DEVELOPMENT

### PART 511—RESEARCH AND DEVELOPMENT (R&D) STUDIES AND PROGRAMS; GENERAL

#### Sec.

- 511.1 Purpose.
- 511.2 [Reserved]
- 511.3 Definitions.
- 511.4 Policy.
- 511.5 R&D work program and changes.
- 511.6 Study proposals and changes.
- 511.7 Equipment and patents.
- 511.8 R&D reports.
- 511.9 Criteria for cooperatively funded studies.
- 511.10 R&D management option.

**AUTHORITY:** 23 U.S.C. 307(c), 315; 49 CFR 1.48(b).

**SOURCE:** 46 FR 59534, Dec. 7, 1981, unless otherwise noted.

#### § 511.1 Purpose.

The purpose of this regulation is to prescribe policies and procedures for R&D federally funded studies and programs.

#### § 511.2 [Reserved]

#### § 511.3 Definitions.

(a) *"Budget item"*—A short descriptive title in the budget tabulation with its associated budget estimate.

(b) *"Final report"*—A report documenting a completed study.

(c) *"Highway Research Information Service (HRIS)"*—A computerized storage and retrieval system for two types of information:

(1) Resumes of ongoing R&D studies, and

(2) Abstracts of R&D reports and articles.

(d) *"Implementation"*—The translation and followup of research results to provide the basis for adopting the innovations into practice.

(e) *"Major change"*—A change, including termination, in a study's objective, scope, work plan, or principal investigator, which significantly alters the course or expected results of the study. Any change which increases the initial estimated cost by more than \$10,000 and 15% shall be considered a major change.

(f) *"Minor change"*—Any other change in the study.

(g) *"National Cooperative Highway Research Program (NCHRP)"*—A pooled fund program directed at the problems of national significance sponsored by the State highway agencies (SHA's) and FHWA, and administered by the Transportation Research Board, National Academy of Sciences.

(h) *"Nonexpendable equipment"*—Equipment having a useful life of more than 1 year and an acquisition cost of more than \$300 per unit.

(i) *"Pooled funding"*—The cooperative funding of a study or project by two or more SHA's.

(j) *"Proposal"*—An outline of a research or development to be conducted which includes such information as a description of the objectives, plan, cost estimate, and time schedule.

(k) *"R&D Work Program"*—An annual or biennial listing of projects, work and estimated cost.

(l) *"Type B Study"*—A small study which does not exceed \$100,000 or require more than 2 years to complete (this time limit may be extended for reasonable delays not to exceed 1 year or for experimental construction studies) and is one of the following types: (1) Short-term study relating to local or regional problems; (2) exploratory, survey, or feasibility study; (3) experimental construction studies; (4) Federal-Aid Highway Program Manual, Volume 6, Chapter 4, Section 2, Subsection 4 (FHPM 6-4-2-4) construction projects incorporating experimental and/or evaluation features;<sup>1</sup> or (4) implementation efforts.

(m) *"Type A Study"*—A study which addresses regional or national problems or exceeds the limitations of a Type B study defined above.

[46 FR 59534, Dec. 7, 1981; 47 FR 62611, 1982]

#### § 511.4 Policy.

(a) *R&D Programs.* Each SHA is encouraged to maintain a viable research

<sup>1</sup>The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

and development program, adequately funded, to address their most urgent short- and long-range problems. To promote effective utilization of available resources, SHA's are encouraged to cooperate with FHWA and other SHA's to achieve R&D objectives established at the national level. An SHA R&D program is primarily a problem-solving service to the practicing engineers and other users. It can best be justified as a continuing activity when it is demonstrated that R&D results and end-products are used and pay dividends to the highway program as a whole.

(b) *Technology transfer.* In order to benefit from the results of research and development, each SHA is encouraged to develop an active technology transfer program to promote the use of those results.

(c) *R&D reports.* All studies shall be completely documented in a timely manner. When the work is not normally expected to result in a final report, this provision will not apply.

(d) *Cooperatively funded studies & programs.* When widespread national or regional interest is shown in the solution of a significant problem, FHWA encourages arrangements by which an R&D study may be cooperatively sponsored by two or more SHA's. The study may be administered by a lead SHA under its own procedures, by NCHRP, or by the FHWA Washington Headquarters under the Federal Procurement Regulations (41 CFR).

(e) *Civil Rights.* The implementation of these program activities shall be in accordance with the policy of the Federal Highway Administration to ensure compliance with Title VI of the Civil Rights Act of 1964, 49 CFR Part 21, and Related Statutes and Regulations, as stated in 23 CFR Part 200.

#### § 511.5 R&D work program and changes.

(a) An SHA desiring Federal aid for R&D work must prepare an R&D work program and submit it to FHWA for approval. It shall cover each approved Type A and Type B study until either the study's draft final report has been accepted by FHWA as fulfilling the technical requirements, or the study has been terminated. It shall in-

clude the following information in tabular form for each budget item.

- (1) State study number.
- (2) Study type (A or B).
- (3) Study title.
- (4) Budget estimate for program year.
- (5) Estimated cost for previous year for continuing studies.

(b) Individual budget items for "Administration," "Research Correlation Service," "Implementation," and "Contingencies" may be included as needed in each SHA R&D work program, in addition to the budget items for Type A and Type B studies, and a listing of proposed studies. Cost increases of more than 15% in the non-study items shall be submitted to FHWA for approval.

#### § 511.6 Study proposals and changes.

(a) An SHA desiring Federal aid initiates a request for a Type A or Type B study by submitting the study proposal to the Federal Highway Administration (FHWA) for approval except as provided in § 511.10, *R&D management option*. A research study proposal shall establish the necessity for a research undertaking, clearly define the objective, provide a detailed work plan for achieving the objective, and indicate how the research findings are expected to be used. An HRIS or other literature search shall be made for Type A studies to minimize duplication of work. Such a search is encouraged for Type B studies.

(b) *Major changes.* Major changes in the objective, scope, work plan, principal investigator, or cost shall be fully documented and for Type A studies shall be submitted to FHWA for prior approval. An SHA may make major changes in Type B studies without prior FHWA approval.

(c) *Minor changes.* Minor cost changes may be made by the SHA without FHWA approval except for the purchase of nonexpendable equipment costing over \$1,000. FHWA shall be promptly informed of all actions taken by the SHA.

#### § 511.7 Equipment and patents.

(a) Nonexpendable equipment for an R&D study shall be purchased and

managed in such a manner that only those equipment costs reasonably attributable to the study are charged to that study. Nonexpendable equipment purchased with Federal-aid funds shall be properly disposed of at the completion of the study and the residual value credited to the study. The SHA shall obtain prior FHWA approval on all equipment purchased, rented, or disposed of which exceeds \$1,000. This approval may be requested as a part of the proposal submission, or as a separate submission.

(b) Each SHA shall maintain an inventory record for each piece of non-expendable equipment purchased or built under the Federal-aid R&D program including equipment acquired by a contractor. Property records shall include:

(1) A description of the property including the manufacturer's serial number, model number, or other identification number.

(2) Source of the property including the study number or title.

(3) Acquisition date and unit acquisition cost.

(4) Location, use and condition of the property and the date the information was reported.

(5) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value.

(c) When nonexpendable property is acquired with Federal-aid funds, the title shall rest with the SHA.

(d) If an R&D study is expected to produce patents, patent rights processes or inventions, the SHA shall insert one of the clauses for domestic contracts set forth in 41 CFR 1-9.1, Patents, or a substitute approved by FHWA, to assure the preservation of the public's rights in inventories resulting from these studies. The SHA shall promptly report to FHWA the fact of any invention or discovery which occurs in the course of the study and shall consult with FHWA regarding the disposition of the matter.

#### § 511.8 R&D reports.

(a) *Progress reports.* For all studies in an approved work program, progress reports shall be submitted to

FHWA as specified in FHWA's approval of the study. A minimum of two progress reports shall be submitted each year. These reports shall contain sufficient information to evaluate the progress and possible future course of the study.

(b) *Interim reports.* These reports shall be submitted to FHWA for review and acceptance prior to publication. They shall be submitted when major phases of a study are completed as stipulated in the approved work plan, or when significant scientific breakthroughs are realized.

(c) *Final reports.* A final report shall completely document all data gathered, analyses performed, and the results achieved. For a study where a number of interim reports have been published, a summary final report satisfactory, provided adequate detailed documentation of the work completed has been published previously. The SHA's shall determine if a study produced implementable results. If the study report shall recommend procedures for implementation, and indicate expected benefits. The final report shall be sent to FHWA for review and acceptance prior to publication.

(d) The author shall be free to copy right material developed under the contract with the provision that the SHA and FHWA reserve a royalty free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for Government purposes.

(e) Reports of nonprofitmaking organizations may be published by FHWA fails to complete its review within 4 months from submission. Reports of nonprofitmaking organizations may be published even though the FHWA does not concur with the findings and conclusions in the report provided FHWA has the right to include technical comments in the report in a clearly identified section such as "sponsors comments."

(f) Adherence to the DOT document "Standards for the Preparation and Publication of DOT Scientific and Technical Reports" is encouraged in the preparation of all R&D interim and final reports.

(g) An SHA shall include in each report a credit reference to FHWA such as, "prepared in cooperation with the U.S. Department of Transportation, Federal Highway Administration."

(h) An SHA shall include in each report a disclaimer statement equivalent to the following:

The contents of this report reflect the views of the author(s) who is (are) responsible for the facts and the accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the (SHA or the) Federal Highway Administration at the time of publication. This report does not constitute a standard specification, or regulation.

#### §511.9 Criteria for cooperatively funded studies.

(a) The following criteria are used by FHWA for determining when Federal-aid funds used for R&D studies and programs without State matching would best serve the interest of the Federal-aid highway program:

(1) The proposed study or program addresses a national or regional problem of high priority, and the results are expected to be immediately implementable.

(2) The study proposal satisfies the requirements in § 511.6(a) of this regulation.

(b) The National Cooperative Highway Research Program (NCHRP) satisfies the criteria set forth in § 511.9(a), and Federal-aid funds without State matching may be used in this program.

#### § 511.10 R&D management option

(a) Any SHA operating under the R&D management option may initiate new Type B studies without prior FHWA approval except those which require FHWA approval of the proposed work in accordance with 23 CFR Part 172, Administration of Negotiated Contracts. The FHWA shall be fully informed of all such actions by transmittal of the initiating documents to FHWA.

(b) If an SHA desires to manage its Federal-aid R&D program under this option, the SHA shall submit a request to FHWA for approval. FHWA will review the SHA's request and will determine if the SHA is capable of accomplishing the legislative objectives of the Federal-aid R&D Program (23 U.S.C. 307(c)) without FHWA review and approval of Type B studies. The FHWA review will be based on the following criteria:

(1) The SHA has established internal reporting and review procedures to accomplish the legislative objectives of 23 U.S.C. 307(c).

(2) The SHA has documented its current internal operating procedures which include the requirements of 23 CFR Subchapter F.

(3) The SHA has designated R&D manager to direct and control the Federal-aid program.

(c) If the SHA's request satisfies the criteria, its request to operate under the R&D management option shall be approved by FHWA. If the SHA's R&D management is in substantial (but not complete) agreement with the criteria, the SHA's request may be approved on a provisional basis.

## SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

### PART 620—ENGINEERING

#### Subpart A—Highway Improvements in the Vicinity of Airports

##### Sec.

- 620.101 Purpose.
- 620.102 Applicability.
- 620.103 Policy.
- 620.104 Standards.

#### Subpart B—Relinquishment of Highway Facilities

- 620.201 Purpose.
- 620.202 Applicability.
- 620.203 Procedures.

**AUTHORITY:** 23 U.S.C. 315 and 318; 49 CFR 1.48, 23 CFR 1.32.

#### Subpart A—Highway Improvements in the Vicinity of Airports

**SOURCE:** 39 FR 35145, Sept. 30, 1974, unless otherwise noted.

##### § 620.101 Purpose.

The purpose of this section is to implement Title 23 United States Code, section 318 which requires coordination of airport and highway developments to insure (a) that airway-highway clearances are adequate for the safe movement of air and highway traffic, and (b) that the expenditure of public funds for airport and highway improvements is in the public interest.

##### § 620.102 Applicability.

The requirements of this section apply to all projects on which Federal-aid highway funds are to be expended and to both civil and military airports.

##### § 620.103 Policy.

(a) Federal-aid highway funds shall not participate in the costs of reconstruction or relocation of any highway to which this section applies unless the Federal Highway Administration (FHWA) and State officials, in cooperation with the Federal Aviation Administration (FAA) or appropriate military authority, or in the case of privately owned airports, the owner of that airport, determine that the location or extension of the airport in

question and the consequent relocation or reconstruction of the highway is in the public interest.

(b) In addition to complying with 23 U.S.C. 318 and insuring the prudent use of public funds, it is the policy of FHWA to provide a high degree of safety in the location, design, construction and operation of highways and airports.

(c) Federal-aid funds shall not participate in projects where substandard clearances are created or will continue to exist.

##### § 620.104 Standards.

A finding of public interest by FHWA will be based on compliance with airway-highway clearances which conform to FAA standards for aeronautical safety.

#### Subpart B—Relinquishment of Highway Facilities

**SOURCE:** 39 FR 33311, Sept. 17, 1974, unless otherwise noted.

##### § 620.201 Purpose.

To prescribe Federal Highway Administration (FHWA) procedures relating to relinquishment of highway facilities.

##### § 620.202 Applicability.

The provisions of this section apply to highway facilities where Federal-aid funds have participated in either right-of-way or physical construction costs of a project.

##### § 620.203 Procedures.

(a) After final acceptance of a project on the Federal-aid primary, urban, or secondary system or after the date that the plans, specifications and estimates (PS&E) for the physical construction on the right-of-way for a Federal-aid Interstate project have been approved by the FHWA, relinquishment of the right-of-way or any change made in control of access shall be in accordance with the provisions of this section. For the purposes of this section, final acceptance for a

project involving physical construction is the date of the acceptance of the physical construction by the FHWA and for right-of-way projects, the date the division engineer determines to be the date of the completion of the acquisition of the right-of-way shown on the final plans.

(b) For the purposes of this section, "relinquishment" is defined as the conveyance of a portion of a highway right-of-way or facility by a State highway agency (SHA) to another Government agency for highway use.

(c) The following facilities may be relinquished in accordance with paragraph 203(f):

(1) Sections of a State highway which have been superseded by construction on new location and removed from the Federal-aid system and the replaced section thereof is approved by the FHWA as the new location of the Federal-aid route. Federal-aid funds may not participate in rehabilitation work performed for the purpose of placing the superseded section of the highway in a condition acceptable to the local authority. The relinquishment of any Interstate mileage shall be submitted to the Federal Highway Administrator as a special case for prior approval.

(2) Sections of reconstructed local facilities that are located outside the control of access lines, such as turn-arounds of severed local roads or streets adjacent to the Federal-aid project's right-of-way, and local roads and streets crossing over or under said project that have been adjusted in grade and/or alignment, including new right-of-way required for adjustments. Eligibility for Federal-aid participation in the costs of the foregoing adjustments is as determined at the time of PS&E approval under policies of the FHWA.

(3) Frontage roads or portions thereof that are constructed generally parallel to and outside the control of access lines of a Federal-aid project for the purpose of permitting access to private properties rather than to serve as extensions of ramps to connect said Federal-aid project with the nearest crossroad or street.

(d) The following facilities may be relinquished only with the approval of

the Federal Highway Administrator in accordance with paragraph 203(g).

(1) Frontage roads or portions thereof located outside the access control lines of a Federal-aid project that are constructed to service (in lieu of or in addition to the purposes outlined under paragraph (c)(3) of this section) as connections between ramps to or from the Federal-aid project and existing public roads or streets.

(2) Ramps constructed to serve as connections for interchange of traffic between the Federal-aid project and local roads or streets.

(e) Where a frontage road is not on an approved Federal-aid system title to the right-of-way may be acquired initially in the name of the political subdivision which is to assume control thus eliminating the necessity of a formal transfer later. Such procedure would be subject to prior FHWA approval and would be limited to those facilities which meet the criteria set forth in paragraphs (c) (2) and (3) of this section.

(f) Upon presentation by a State that it intends to relinquish facilities such as described in paragraph (c) (1), (2) or (3) of this section to local authorities, the division engineer of the FHWA shall have appropriate field and office examination made thereof to assure that such relinquishments are in accordance with the provisions of the cited paragraphs. Relinquishments of the types described in paragraph (c) (1), (2) or (3) of this section may be made on an individual basis or on a project or route basis subject to the following conditions and understandings:

(1) Immediately following action by the State in approving a relinquishment, it shall furnish to the Division Administrator for record purposes a copy of a suitable map or maps identified by the Federal-aid project number, with the facilities to be relinquished and the date of such relinquishment action clearly delineated thereon.

(2) If it is found at any time after relinquishment that a relinquished facility is in fact required for the safe and proper operation of the Federal-aid highway, the State shall take immediate action to restore such facility to its



jurisdiction without cost to Federal-aid highway funds.

(3) If it is found at any time that a relinquished frontage road or portion thereof or any part of the right-of-way therefor has been abandoned by local governmental authority and a showing cannot be made that such abandoned facility is no longer required as a public road, it is to be understood that the Federal Highway Administrator may cause to be withheld from Federal-aid highway funds due to the State an amount equal to the Federal-aid participation in the abandoned facility.

(4) In no case shall any relinquishment include any portion of the right-of-way within the access control lines as shown on the plans for a Federal-aid project approved by the FHWA, without the prior approval of the Federal Highway Administrator.

(5) There cannot be additional Federal-aid participation in future construction or reconstruction on any relinquished "off the Federal-aid system" facility unless the underlying reason for such future work is caused by future improvement of the associated Federal-aid highway.

(g) In the event that a State desires to apply for approval by the Federal Highway Administrator for the relinquishment of a facility such as described in paragraph (d) (1) and (2) of this section, the facts pertinent to such proposal are to be presented to the division engineer of the FHWA. The division engineer shall have appropriate review made of such presentation and forward the material presented by the State together with his findings thereon through the Regional Federal Highway Administrator for consideration by the Federal Highway Administrator and determination of action to be taken.

(h) No change may be made in control of access, without the joint determination and approval of the SHA and FHWA. This would not prevent the relinquishment of title, without prior approval of the FHWA, of a segment of the right-of-way provided there is an abandonment of a section of highway inclusive of such segment.

(i) Relinquishments must be justified by the State's finding concurrence by the FHWA, that:

(1) The subject land will not be needed for Federal-aid highway purposes in the foreseeable future;

(2) That the right-of-way being relinquished is adequate under present design standards for the facility involved;

(3) That the release will not adversely affect the Federal-aid highway facility or the traffic thereon;

(4) That the lands to be relinquished are not suitable for retention in order to restore, preserve, or improve the scenic beauty adjacent to the highway; consonant with the intent of 23 U.S.C. 319 and Pub. L. 89-285, Title III, sections 302-305 (Highway Beautification Act of 1965).

(j) If a relinquishment is to a Federal, State, or local governmental agency for highway purposes, there need not be a charge to the said agency, nor on such event any credit to Federal funds. If for any reason there is a charge to the said agency and Federal funds participated in the cost of the right-of-way, there shall be a credit to Federal funds on the same basis as Federal funds participated in the cost of the right-of-way.

## PART 625—DESIGN STANDARDS FOR HIGHWAYS

Sec.

625.1 Purpose.

625.2 Policy.

625.3 Standards, specifications, policies, guides, and references.

625.5 Application.

625.7 Special considerations.

APPENDIX A—DOCUMENTS CITED IN PART 625

AUTHORITY: 23 U.S.C. 109, 315, and 402; 23 CFR 1.48(b), unless otherwise noted.

SOURCE: 43 FR 14648, Apr. 7, 1978, unless otherwise noted.

### § 625.1 Purpose.

To designate those standards, specifications, policies, guides, and references that are acceptable to the Federal Highway Administration (FHWA) for application in the geometric and structural design and traffic control features of highways.

## § 625.2 Policy.

(a) Plans and specifications for proposed Federal-aid highway projects shall provide for a facility that will (1) adequately meet the existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance; and (2) be designed and constructed in accordance with standards best suited to accomplish the foregoing objectives and to conform to the particular needs of each locality.

(b) The development and overall management of highway facilities must be considered as a continuing program. This process of highway management commences with planning and extends through design, construction, maintenance, and operation. To assure a continuing acceptable level of safe traffic service, it is essential to provide for adequate maintenance and periodic resurfacing, restoration, and rehabilitation (RRR) throughout the life of the highway. The RRR work is defined as work undertaken to extend the service life of an existing highway and enhance highway safety. This includes placement of additional surface material and/or other work necessary to return an existing roadway, including shoulders or bridges, the roadside, and appurtenances to a condition of structural or functional adequacy. The RRR work may include upgrading of geometric features, such as minor roadway widening, flattening curves, or improving sight distances. The RRR work is an essential part of any highway program, and each State and local agency should provide for these types of improvements in each annual highway program.

(c) An important goal of the FHWA is to provide the highest practical and feasible level of safety for people and property associated with the Nation's highway transportation systems and to reduce highway hazards and the resulting number and severity of accidents on all the Nation's highways. Accordingly, the only constraint on the application of Federal-aid funds to RRR work is that they must be used to provide a facility that adequately meets existing and probable future traffic needs and conditions in a

manner conducive to safety, durability, and economy of maintenance, and acceptable levels of community and environmental impact. The RRR projects shall be designed and constructed in a manner that will enhance highway safety and accomplish the foregoing objectives according to the particular needs of each State and locality.

(23 U.S.C. 101(e), 109, 315, and 49 CFR 1.48(b); sec. 110(a), Pub. L. 97-424, 96 Stat. 2097 (23 U.S.C. 109(o)); 23 U.S.C. 315; 49 CFR 1.48)

[47 FR 25274, June 10, 1982, as amended at 48 FR 13412, Mar. 31, 1983]

## § 625.3 Standards, specifications, policies, guides, and references.

The following<sup>1</sup> are approved by the FHWA for application on Federal-aid projects. This regulation does not establish Federal standards for work that is not federally funded; however, the safety related criteria of the referenced documents are established as goals for developing State and local safety programs for all public highways as required by Highway Safety Program Standards 12, 23 CFR Part 1204.4.

(a) *Roadway and appurtenances.* (1) A Policy on Geometric Design of Rural Highways, AASHO 1965.<sup>2</sup>

(2) A Policy on Design of Urban Highways and Arterial Streets, AASHO 1973.<sup>3</sup>

(3) Geometric Design Standards for the National System of Interstate and Defense Highways, AASHO 1967.<sup>2</sup>

(4) Geometric Design Standards for Highways Other Than Freeways, AASHO 1969.<sup>2</sup> Minimum criteria for local roads and streets shall be based on paragraph (a)(5) of this section, Geometric Design Guide for Local Roads and Streets.

(5) Geometric Design Guide for Local Roads and Streets, AASHO 1970.<sup>2</sup>

(6) The geometric design standards for resurfacing, restoration, and rehabilitation (RRR) projects on highways other than freeways shall be the procedures and the design or design crite-

<sup>1</sup> For footnotes to this part, see Appendix A.

ria established for individual projects, groups of projects, or all nonfreeway RRR projects in a State, and as approved by the FHWA. The other geometric design standards in this section do not apply to RRR projects on highways other than freeways, except as adopted on an individual State basis. The RRR design standards shall reflect the consideration of the traffic, safety, economic, physical, community, and environmental needs of the projects.

(7) Procedures for Abatement of Highway Traffic Noise and Construction Noise, FHWA, 23 CFR Part 772.

(8) A Policy on the Accommodation of Utilities on Freeway Rights-of-Way, AASHTO 1969.<sup>2</sup>

(9) A Policy on U-Turn Median Openings on Freeways, AASHTO 1960.<sup>2</sup>

(10) A Policy on Access Between Adjacent Railroads and Interstate Highways, AASHTO 1960.<sup>2</sup>

(11) A Policy on Design Standards for Stopping Sight Distance, AASHTO 1971.<sup>2</sup>

(12) An Informational Guide for Roadway Lighting, AASHTO 1976.<sup>2</sup>

(13) Policy on Interstate System Projects, FHWA, FHPM 6-3-2-4.<sup>3</sup>

(14) AASHTO Interim Guide for Design of Pavement Structures—1972, Chapter III Revised, 1981, AASHTO.<sup>2</sup> Pavement design may be based upon procedures and practices of individual agencies that by past performance have proved satisfactory for the pertinent conditions; however, the FHWA will use this guide to evaluate the adequacy of the design proposed.

(15) Skid Accident Reduction Program, FHWA, FHPM 6-2-4-3.<sup>3</sup>

(16) Guidelines for Skid Resistant Pavement Design, AASHTO 1976.<sup>2</sup>

(17) Erosion and Sediment Control on Highway Construction Projects, FHWA, 23 CFR Part 650, Subpart B.

(18) Hydraulic Design of Highway Encroachments on Flood Plains, FHWA, 23 CFR Part 650, Subpart A.

(19) Highway Design and Operational Practices Related to Highway Safety, Report on the Special AASHTO Traffic Safety Committee, AASHTO 1974.<sup>2</sup>

(20) Safer Off-System Roads, FHWA, 23 CFR Part 922.

(21) Guide for Selecting, Locating and Designing Traffic Barrier AASHTO 1977.<sup>2</sup> Barriers classified as either operational or experimental except Type MB1 median barriers, are acceptable for Federal-aid projects.

(b)(1) *Standard Specifications for Highway Bridges*, Twelfth Edition, AASHTO 1977, and *Interim Specifications, Bridges*, AASHTO 1978.<sup>2</sup>

(2) *Standard Specifications for Motorable Highway Bridges*, AASHTO 1970.

(3) *Standard Specifications for Welding of Structural Steel Highway Bridges*, Second Edition, AASHTO 1977.<sup>2</sup>

(4) Reinforcing Steel Welding, AWS D 12.1-75, (to be used as a standard).<sup>4</sup>

(5) *Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signs*, AASHTO 1975.<sup>2</sup>

(6) A Guide for Protective Screening of Overpass Structures, AASHTO 1966.

(c) *Traffic control*. (1) *Manual on Uniform Traffic Control Devices for Streets and Highways*, FHWA, 1978, amended January 1985.<sup>5</sup>

(2) *Traffic Control Devices on Federal-Aid and Other Streets and Highways*, FHWA, 23 CFR Part 655, Subpart F.

(3) *Standard Alphabets for Highway Signs*, FHWA, 1966 Edition, Reprint, May 1972.<sup>3</sup>

(4) *Traffic Surveillance and Control*, FHWA, 23 CFR Part 655, Subpart D.

(5) *Motorist Aid Systems*, FHWA, 23 CFR Part 655, Subpart G.

(6) *Pavement Marking Demonstration Program*, FHWA, 23 CFR Part 920.

(7) *National Standards for Signs Giving Specific Information in the Interest of the Traveling Public*, FHWA, 23 CFR Part 655, Subpart C.

(d) *Materials*. (1) *General Material Requirements*, FHWA, 23 CFR Part 635, Subpart D.

(2) *Standard Specifications for Transportation Materials and Methods of Sampling and Testing*, AASHTO 1978, Part I and Part II.<sup>2</sup>

<sup>4</sup> For footnotes to this part, see Appendix A.

(3) Sampling and Testing of Materials and Construction, FHWA, 23 CFR Part 637, Subpart B.

(e) *Other.* (1) AASHO Highway Definitions, AASHO 1968.<sup>2</sup>

(2) A Guide on Safety Rest Areas for the National System of Interstate and Defense Highways, AASHO 1968.<sup>2</sup> This provides considerations which shall be used to make rest area facilities accessible to physically handicapped persons.

23 U.S.C. 101(e), 109, 315, and 402; 409 CFR 1.48(b)

43 FR 14648, Apr. 7, 1978, as amended 43 FR 27787, June 27, 1978; 43 FR 56660, Dec. 1, 1978; 47 FR 13796, April 1, 1982; 47 FR 25274, June 10, 1982; 50 FR 10004, Mar. 13, 1985]

**EFFECTIVE DATE NOTE** At 50 FR 10004, Mar. 13, 1985, § 625.3(c)(1) was revised, effective July 22, 1985. For the convenience of the user, paragraph (c)(1) as revised at 49 FR 38943, Oct. 2, 1984, and effective until July 22, 1985, is set out below:

625.3 Standards, specifications, policies, guides, and references.

(c) *Traffic Control.* (1) Manual on Uniform Traffic Control Devices for Streets and Highways, FHWA, 1978, as amended, 1985.

#### 625.5 Application.

(a) The standards, policies, and standard specifications contain specific criteria and controls for design of highways. Deviations from specific minimum values therein are to be handled in accordance with procedures in paragraph (e) of this section. When there is a conflict between criteria in the documents enumerated in § 625.3 of this part, the latest listed standard, policy, or standard specification will govern.

(b) The guides and references (handbooks, research reports, etc.) include information and general controls that are valuable in attaining good design and in promoting uniformity. They are intended to provide general program direction. Project-by-project deviations from the criteria in guides and references do not require handling as exceptions under paragraph (e) of this section.

(c) Application of FHWA directives referenced in § 625.3 of this part shall be as set forth therein.

(d) Minimum roadway geometric design standards are not applicable to traffic engineering and safety projects for signing, marking, signal installation, and traffic barriers which include very minor or no roadway work. The Division Administrator shall determine the applicability of the roadway standards on these types of projects, but formal findings of applicability are expected only as needed to resolve controversies.

(e) *Exceptions.* (1) Approval within the delegated authority provided by FHWA Order 1-1<sup>3</sup> may be given to designs on a project basis which do not conform to the minimum design criteria set forth in the standards listed herein for:

(i) Projects involving experimental features; and

(ii) Other projects where unusual conditions warrant that exceptions be made.

(2) The determination to approve a project design that does not conform to the minimum criteria is to be made only after due consideration is given to all project conditions such as maximum service and safety benefits for the dollar invested, compatibility with adjacent section of unimproved roadway, and the probable time before reconstruction of the section due to increased traffic demands or changed conditions.

#### § 625.7 Special considerations.

Federal-aid projects that provide curbs shall include curb ramps at all pedestrian crosswalks, and other provisions as may be appropriate for physically handicapped persons.

#### APPENDIX A—DOCUMENTS CITED IN PART 625

1. These documents may be reviewed at the Department of Transportation Library, Room 2200, DOT Headquarters Building, 400 7th Street SW., Washington, D.C. 20590.

2. American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street NW., Washington, D.C. 20001.

3. These documents are available for inspection and copying as provided in 49 CFR Part 7, Appendix D.

4. American Welding Society, 2501 Northwest 7th Street, Miami, Fla. 33125.

5. Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

## PART 626—PAVEMENT DESIGN POLICY

### Sec.

626.1 Purpose.

626.3 Definitions.

626.5 Policy.

626.7 Project procedures.

### § 626.1 Purpose.

The purpose of this regulation is to set forth pavement design policy for Federal-aid highway projects.

(23 U.S.C. 109 (a), (b), and (c) and 315; 49 CFR 1.48(b))

[43 FR 35030, Aug. 8, 1978]

### § 626.3 Definitions.

(a) "Stage construction"—construction of portions of the ultimate structural design at separate times.

(b) "Ultimate structural design"—the structural design of the pavement needed to accommodate the types and volumes of traffic, and other conditions, forecast for the design life of the roadway.

(23 U.S.C. 109 (a), (b), and (c) and 315; 49 CFR 1.48(b))

[43 FR 35030, Aug. 8, 1978]

### § 626.5 Policy.

(a) *Design procedure.* The "American Association of State Highway and Transportation Officials (AASHTO) Interim Guide for Design of Pavement Structures, 1972", Chapter III Revised, 1981<sup>1</sup> is approved for application on Federal-aid highway projects. Pavement design may be based upon other procedures and practices of individual agencies that by past performance have proved satisfactory for the perti-

<sup>1</sup> This Interim Guide is available for examination as prescribed in 49 CFR Part 7, Appendix D or for purchase from American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street NW., Washington, D.C. 20001.

nent conditions; however, the Federal Highway Administration will use the guide to evaluate the adequacy of design.

(b) *Design period.* The design period for pavements on Federal-aid projects should be appropriate for the particular conditions. For initial Interstate construction projects, the design period shall be 20 years from the date of authorization of the initial base construction contract.

(c) *Safety.* Each Federal-aid project involving construction of the pavement surface, including each stage of stage construction project as described in paragraph (d) of this section, shall have a skid resistant surface.

(d) *Stage construction.* The ultimate structural design for a pavement may be built by stage construction on a Federal-aid project. Except as provided in § 626.7 of this part, Federal funds of the appropriate class may be used for the construction of each stage.

(23 U.S.C. 101(e), 109, 315, and 49 CFR 1.48(b); 23 U.S.C. 109, 131, 149, 315, and 49 CFR 1.48(b); Pub. L. 97-134; 95 Stat. 1699)

[43 FR 35030, Aug. 8, 1978, as amended at 49 FR 13796, Apr. 1, 1984; 49 FR 1895, Jan. 1984]

### § 626.7 Project procedures.

(a) Where stage construction is used on a Federal-aid project, the ultimate structural design shall be documented at the time of approval of the plans, specifications, and estimate (PS&E) for the initial project. If the performance of the first stage indicates a need for revision in the structural design of a subsequent stage, the costs of such revision are eligible for Federal participation.

(b) Each stage shall be designed to minimize later adjustments to such things as drainage structures, curbs and guardrails. Where adjustments are necessary, their costs are eligible for Federal participation. Necessary attendant costs for such items as maintaining traffic, pavement marking, and skid resistant surface course are also eligible.

(c) Federal-aid Interstate (FAI) construction funds, authorized by section

108(b) of the Federal-Aid Highway Act of 1956, as amended, may be used for additional stages of construction only on mainline roadways and ramps, including shoulders, and only when the original project providing for the pavement construction was identified as a stage construction project and the ultimate structural design was documented at the time of approval of the plans, specifications, and estimates. However, FAI construction funds shall not be used for any skid resistant overlay project.

(d) Federal-aid Interstate construction funds are eligible for necessary attendant costs in conjunction with stage construction projects but FAI construction funds shall not be used for rehabilitation or restoration of the existing pavement.

23 U.S.C. 101(e), 109, 315, and 49 CFR 1.48(b); 23 U.S.C. 109, 131, 149, 315, and 319; 49 CFR 1.48(b); Pub. L. 97-134; 95 Stat. 699

43 FR 35030, Aug. 8, 1978, as amended at 47 FR 13796, Apr. 1, 1982; 49 FR 1895, Jan. 16, 1984]

## PART 630—PRECONSTRUCTION PROCEDURES

### Subpart A—Federal-Aid Programs Approval and Project Authorization

- Sec.
- 630.102 Purpose.
- 630.104 Definitions.
- 630.106 Policy.
- 630.108 Program submissions.
- 630.110 General requirements.
- 630.112 Approval of programs.
- 630.114 Authorization to proceed.

### Subpart B—Plans, Specifications, and Estimates

- 630.201 Purpose.
- 630.203 Applicability.
- 630.205 Preparation, submission, and approval.

### Subpart C—Project Agreements

- 630.301 Purpose.
- 630.302 Definitions.
- 630.303 Policy.
- 630.304 Preparation of agreement.
- 630.305 Agreement provisions regarding overruns in contract time.
- 630.306 Modification of original agreement.

Sec.

### APPENDIX A—FEDERAL-AID PROJECT AGREEMENT, FORM PR-2

### APPENDIX B—MODIFICATION OF FEDERAL-AID PROJECT AGREEMENT, FORM PR-2A

### APPENDIX C—FEDERAL-AID PROJECT AGREEMENT (NATIONAL COOPERATIVE HIGHWAY RESEARCH PROGRAM), FORM PR-2.1

### Subpart D—Geodetic Markers

- 630.401 Purpose.
- 630.402 Policy.
- 630.403 Initiation of projects.
- 630.404 Standards.

### Subparts E-F—[Reserved]

### Subpart G—Advance Construction of Federal-Aid Projects

- 630.701 Purpose.
- 630.702 Requirements and conditions.
- 630.703 Programs.
- 630.704 Bond proceeds expended on projects.
- 630.705 Approval actions.
- 630.706 Project agreements.
- 630.707 Construction.
- 630.708 Conversion from advance construction status to regular Federal-aid funded status.
- 630.709 Progress and final vouchers.
- 630.710 Cash management.

### Subpart H—Bridges on Federal Dams

- 630.801 Purpose.
- 630.802 Applicability.
- 630.803 Procedures.

### Subpart I—[Reserved]

### Subpart J—Traffic Safety in Highway and Street Work Zones

- 630.1002 Purpose.
- 630.1004 Background.
- 630.1006 Policy.
- 630.1008 Implementation.
- 630.1010 Contents of the agency procedures.

**AUTHORITY:** 23 U.S.C. 101(a), 104, 109, 110, 113, 115, 120(f), 121(c), 125, 315, 320; 23 CFR 1.32, 49 CFR 1.48(b), unless otherwise noted.

### Subpart A—Federal-Aid Programs Approval and Project Authorization

**AUTHORITY:** 23 U.S.C. 105, 106, 118, 134, and 315; 49 CFR 1.48(b) unless otherwise noted.

**SOURCE:** 43 FR 34461, Aug. 4, 1978, unless otherwise noted.

§ 630.102 Purpose.

The purpose of this subpart is to prescribe policies and procedures for preparation, submission and approval of programs for utilization of highway funds and to describe project authorization procedures.

§ 630.104 Definitions.

Terms used in this regulation are as defined in 23 U.S.C. 101(a).

§ 630.106 Policy.

(a) Annually, any State highway agency (SHA) desiring to avail itself of Federal-aid funds shall develop and submit a program(s) of projects which reflect projects proposed for utilization of available apportioned and certain allocated Federal-aid funds during any 12 consecutive month program period.

(b) In recognition of the national concern that this country practice rigorous energy conservation, and in further recognition that highway transportation is a major consumer of petroleum-based fuels, the planning, design, construction, management, and operation of the Federal-aid highway system shall be conducted in a manner that conserves fuel, maintains the greatest degree of personal and economic mobility consistent with the availability of fuel, and maintains a state of emergency preparedness in the event of an abrupt fuel curtailment. Energy conservation is a national goal of utmost importance which must be supported by, and incorporated into, the processes for the programming and authorization of Federal-aid projects.

(c) A program(s) of projects is needed to assure:

(1) An appropriate planning effort by the SHA,

(2) That each SHA considers national goals, objectives, and emphasis areas as set forth in legislation, or as promulgated by the Federal Highway Administrator in developing its Federal-aid program(s).

[43 FR 34461, Aug. 4, 1978, as amended at 45 FR 58036, Aug. 29, 1980]

§ 630.108 Program submissions.

(a) The program(s) shall be submitted for approval to the FHWA Administrator in a form and at times mutually agreeable with the SHA.

(b) The program(s) shall include those projects for which the SHA expects to request authorization during the program period. A project may compass one or more phases of work including preliminary engineering (PE), right-of-way (ROW), and preliminary construction.

(c) The program(s) shall identify classes of funds involved, and the relationship of the total funds to amounts expected to be available during the program period.

(d) The SHA shall furnish the FHWA Administrator all information requested to support program approval action.

(e) Projects involving special procedures or special funds authorization shall be supported and program requirements required by the implementing regulations issued to cover such funds.

(f) The Federal-aid program shall include high-hazard location, elimination of roadside obstacles, special bridge placement, and elimination of hazards of railway-highway crossing projects may consist of a line item for each category describing the planned level of effort (fund utilization). Selection of projects for authorization shall be from a priority process established pursuant to the appropriate state requirements.

§ 630.110 General requirements.

(a) In preparing the program(s) appropriate consideration shall be given to the statutory system requirements.

(b) In preparing the program(s) the SHA shall give consideration to projects identified as energy conservation, such as, but not limited to, public transportation, ridesharing activities and facilities, bicycle and pedestrian facilities, traffic signalization and control, HOV facilities, and resurfacing, restoration, and rehabilitation work. The program shall include a discussion of the priority to be given to such projects, consistent with energy conservation aspects of Statewide and urban comprehensive transportation

planning, and the contribution toward achieving energy conservation goals or targets.

(c) Projects for utilizing secondary system funds shall be selected cooperatively by the SHA and the appropriate local officials except where all public roads and highways are under the control and supervision of the SHA. In the excepted case, selection shall be made after consultation with appropriate local officials. Acceptable evidence of cooperation or consultation is:

(1) A statement to that effect from the SHA accompanying the program submission; or

(2) A procedure contained in an accepted State certification (23 CFR Part 640), approved secondary road plan (23 CFR Part 642), or State procedures accepted under 23 U.S.C. 109(h).

(d) Projects in urbanized areas shall:

(1) Be based on a planning process pursuant to 23 U.S.C. 134 (23 CFR Part 450, Subpart A), and

(2) Be drawn from the annual element/transportation improvement program (AE/TIP) in accordance with 23 CFR Part 450, Subpart B. Primary and interstate safety projects are exempt from the AE/TIP requirement, if included in the highway safety program.

(e) Projects for utilizing urban system funds shall be selected by appropriate local officials with the concurrence of the SHA.

(1) In urbanized areas, inclusion of urban system projects in the AE/TIP meets the requirements for selection by local officials.

(2) In other than urbanized areas, selection by local officials may be evidenced by:

(i) A procedure contained in an accepted State certification, approved secondary road plan, or State procedures accepted under 23 U.S.C. § 109(h), or

(ii) A statement from the SHA accompanying the program submission certifying the selection by local officials.

(f) Work of a minor miscellaneous nature, at a number of separate locations, may be grouped by type of work and class of funds and included as a

single statewide or areawide project or line item in the appropriate program(s).

(g) In accordance with 23 CFR Part 420, Subpart C, the SHA shall provide the appropriate A-95 clearinghouse(s) an opportunity to review and comment on proposed projects at the earliest feasible time.

(h) Projects shall be in conformity with State air quality implementation plans (23 CFR Part 770) revised pursuant to Part D of title I of the Clean Air Act.

(Sec. 111 of the Federal-Aid Highway Act of 1978, Pub. L. 95-599, 92 Stat. 2689; 23 U.S.C. 105(b); 49 CFR 1.48(b), sec. 403(b), Pub. L. 95-620; E.O. 12185; 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 109(h), 138, 315; 49 U.S.C. 1653(f); 49 CFR 1.48(b))

[43 FR 34461, Aug. 4, 1978, as amended at 44 FR 11542, Mar. 1, 1979; 45 FR 58036, Aug. 29, 1980; 47 FR 47239, Oct. 25, 1982]

#### § 630.112 Approval of programs.

(a) The FHWA Division Administrator will first review the program to assure that it provides adequate consideration of and represents an aggressive effort toward energy conservation in the number and types of projects which offer high potential for conserving energy in accordance with State and national goals or targets.

(b) The FHWA Administrator will notify the SHA in writing of the action taken on the program submission, indicating approval in whole or in part and any qualifications or conditions determined necessary.

(c) Program approval will indicate Federal agreement with the SHA's list of proposed projects. It does not constitute an obligation of funds, nor establish a date of eligibility for Federal funding.

(d) The FHWA Administrator will notify the appropriate A-95 clearinghouse(s) of program or project actions in accordance with 23 CFR Part 420, Subpart C.

(e) Approved programs may be modified during the program period as necessary to reflect additional funds, new areas of emphasis, changes in length or termini, or changes in project priorities. No modification is required to reflect changes in class of funding



except where local project selection is required.

(f) Highway projects will be approved by the FHWA Administrator. Nonhighway public mass transit projects as defined in 23 CFR 810.4(b)(6) are approved by the Urban Mass Transportation Administrator in accordance with 23 CFR Part 810 (FHPM 6-3-4). If a nonhighway public mass transit project proposed for urban system funding included in an AE/TIP is omitted from the program, action on the urban system funded program for that urbanized area will be taken jointly in accordance with 23 CFR 450.320(a)(1)(iii) by both Administrators.

(g) At the end of the program period, projects for which initial authorizations have not been issued will retain program status until the next program is approved. Projects not receiving initial authorizations that are not included in the next year's program(s) lose their program status. These projects may be reprogramed later.

(Sec. 403(b), Pub. L. 95-620; E.O. 12185)

[43 FR 34461, Aug. 4, 1978, as amended at 45 FR 58037, Aug. 29, 1980]

**§ 630.114 Authorization to proceed.**

(a) With each authorization, the FHWA Division Administrator shall review the level of program implementation to assure that the energy conservation projects are proceeding at a rate consistent with implementation of other categories of projects. The FHWA Division Administrator shall also assure that energy efficiency is a basic objective in the design and construction of projects.

(b) The FHWA issuance of an authorization to proceed with the work on any phase of a highway project, including those under certification acceptance and secondary road plan, shall be in response to a request from the SHA. Authorization can be given only after applicable prerequisite requirements of Federal laws, and implementing regulations and directives have been satisfied, e.g., A-95 clearing-house review and standards as prescribed by 23 U.S.C. 109.

(c) Authorizations to proceed subsequent to program approval for non-

highway public mass transit projects are issued by the Urban Mass Transportation Administrator in accordance with 23 CFR Part 810 (FHPM 6-3-4).

(d) The initial authorization to proceed with a phase of work shall be based on an approved item providing for that phase of work in a current program.

(e) Projects in urbanized areas can be authorized only after the responsible public officials or jurisdictions in which the project is located have been consulted and their views considered with respect to the corridor, the location and the design of the project.

(f) Authorization to proceed with project may be given for a complete phase or phases of work, or a portion of a phase of work. Additional authorizations within the same phase(s) of work do not require further programming, if such authorizations are within the scope of the programmed project and provide for a timely completion of the project.

(g) Federal funds shall not participate in costs incurred prior to the date of authorization to proceed.

(h) Authorization to proceed with work shall be deemed a contractual obligation of the Federal Government under 23 U.S.C. 106 and shall require the appropriate funds be available for the full Federal share of the cost of work authorized except as follows:

- (1) Advance construction projects.
- (2) Bond issue projects.

(3) The preliminary studies portion of the PE and ROW phase(s) (including hardship acquisition and protective buying) through the location stage (i.e., from the end of system planning through the selection of particular location), when an SHA requests authorization with obligation of funds. The written notice to an SHA approving its request will contain the following statement: "Authorization to proceed shall not constitute any commitment of Federal funds, nor shall it be construed as creating in any manner any obligation on the part of the Federal Government to provide Federal funds for the undertaking." When a project has received an authorization as permitted above, subsequent authorizations beyond the location stage shall not be given until ap-

appropriate available funds have been obligated to cover the previous authorization.

(4) Where a State lacks either Federal funds or obligational authority, the approval to underfinance work may be given, but only with the understanding that the dollar amount of Federal-aid participation is limited to the amount committed at the time of funding obligation or the legal pro rata, whichever is less.

(5) In special cases where the Federal Highway Administrator determines it to be in the best interest of the Federal-aid highway program.

(6) No project shall be authorized that will result in the severance or destruction of an existing major route for non-motorized transportation traffic and light motorcycles, unless such project provides a reasonably alternate route or such a route exists.

3 FR 34461, Aug. 4, 1978, as amended at 44 FR 46835, Aug. 9, 1979; 45 FR 58037, Aug. 1, 1980; 47 FR 47239, Oct. 25, 1982]

## Subpart B—Plans, Specifications, and Estimates

**AUTHORITY:** 23 U.S.C. 106, 315; 49 CFR 49(b).

**SOURCE:** 43 FR 58564, Dec. 15, 1978, unless otherwise noted.

### § 630.201 Purpose.

The purpose of this subpart is to prescribe Federal Highway Administration (FHWA) procedures relating to the preparation, submission, and approval of plans, specifications and estimates (PS&E), and supporting documents for Federal-aid projects.

### § 630.203 Applicability.

The provisions of this regulation apply to all highway construction projects financed in whole or in part with Federal-aid highway funds and to those undertaken by a State or political subdivision, except for projects carried out pursuant to 23 U.S.C. 117 relative to certification acceptance or a secondary road plan.

### § 630.205 Preparation, submission, and approval.

(a) The contents and number of copies of the PS&E assembly shall be determined by the FHWA.

(b) Plans and specifications shall describe the location and design features and the construction requirements in sufficient detail to facilitate the construction, the contract control and the estimation of construction costs of the project. The estimate shall reflect the anticipated cost of the project in sufficient detail to provide an initial prediction of the financial obligations to be incurred by the State and FHWA and to permit an effective review and comparison of the bids received.

(c) PS&E assemblies for Federal-aid highway projects shall be submitted to the FHWA for approval.

(d) The State highway agency (SHA) shall be advised of approval of the PS&E by the FHWA.

(e) No project or part thereof for actual construction shall be advertised for contract nor work commenced by force account until the PS&E has been approved by the FHWA and the SHA has been so notified.

## Subpart C—Project Agreements

**SOURCE:** 39 FR 35348, Oct. 1, 1974, unless otherwise noted.

### § 630.301 Purpose.

The purpose of the regulations in this subpart is to prescribe the form and procedures for the preparation and execution of the project agreement required by 23 U.S.C. 110(a) for Federal-aid projects, except for forest highway projects pursuant to 23 U.S.C. 204, and for nonhighway public mass transit projects pursuant to 23 U.S.C. 103(e)(4), 142(a)(2), and 142(c).

### § 630.302 Definitions.

(a) The term "bond issue project" means a project authorized pursuant to 23 U.S.C. 122.

(b) The term "calendar day" means each day shown on the calendar but, if another definition is set forth in the State contract specifications, that definition will apply.

(c) The term "certification acceptance project" means a project which is constructed under the terms of a State Certification as authorized by 23 U.S.C. 117 and 23 CFR Part 640.

(d) The term "contract time" means the number of workdays or calendar days specified in a contract for completion of the contract work. The term includes authorized time extensions.

(e) The term "Division Administrator" means the chief Federal Highway Administration (FHWA) officer assigned to conduct FHWA business in a particular State, the District of Columbia, or the Commonwealth of Puerto Rico.

(f) The term "Federal-aid highway project" means a project, other than an HP&R project, funded in whole or in part, with sums apportioned pursuant to Title 23, United States Code and section 203(d) of the Highway Safety Act of 1973.

(g) The term "highway planning and research project" (HP&R) means a project funded pursuant to 23 U.S.C. 307(c) and 104(f).

(h) The term "liquidated damages" means the daily amount set forth in the contract to be deducted from the contract price to cover additional costs incurred by a State highway agency because of the contractor's failure to complete the contract work within the number of calendar days or workdays specified. The term may also mean the total of all daily amounts deducted under the terms of a particular contract.

(i) The term "State highway agency" has the same meaning as that given for "State highway department" in 23 U.S.C. 101.

(j) The word "workday" means a calendar day during which construction operations could proceed for a major part of a shift, normally excluding Saturdays, Sundays, and State-recognized legal holidays.

[39 FR 35348, Oct. 1, 1974, as amended at 40 FR 64191, Feb. 12, 1975; 40 FR 55639, Dec. 1, 1975]

#### § 630.303 Policy.

(a) The State highway agency shall prepare a project agreement for each Federal-aid highway, and highway planning and research project eligible

for Federal-aid funding. An agreement shall be prepared on FHWA Form PR-2 (Appendix A) and amendments to or modifications of such original agreement shall be prepared on FHWA Form PR-2A (Appendix B). Agreements for projects under the National Cooperative Highway Research Program (NCHRP) shall be prepared on FHWA Form PR-2 (Appendix C).

(b) Project agreements, and amendments to and amendments thereto shall evidence acceptance by the highway agency of:

(1) Conditions to payment of Federal funds as prescribed by Federal rules and regulations; and

(2) The amount of Federal funds obligated.

#### § 630.304 Preparation of agreement.

(a) The purposes of the Form PR-2 are:

(1) To cover the various types of projects and kinds of work to be undertaken;

(2) To indicate the effective date governing reimbursement of the Federal share of eligible items of cost;

(3) To show the total amount of Federal funds obligated and underment for the project; and

(4) To set forth any special provisions relating to the project.

(b) The Division Administrator, pursuant to his delegated authority, on behalf of FHWA executes the project agreement or modification or amendment thereof when he has ascertained that the agreement, or modification or amendment thereof, is properly prepared and not at variance with any statutory or regulatory requirements pursuant to Federal laws.

(c) The Form PR-2 shall be prepared as follows:

(1) All information normally required for proper preparation of the Form PR-2 can be placed on the first page of the form. All signatures will be placed on that page in the spaces provided. Separate project agreements shall be prepared for each successive improvement or independent class of work subject to Federal funding that is to be performed contemporaneously.

with other work, between the same termini.

(2) Provisions 1 through 20 of Form PR-2 contain special provisions to apply to agreements for individual projects. The special provisions which apply to a particular project will be governed by the project identification determined in accordance with Vol. 6, Chap. 3, section 2 of the Federal-Aid Highway Program Manual. Those special provisions applicable to a particular project become automatically incorporated in the project agreement by means of such project identification.

(3) Space is provided on Form PR-2 for listing additional provisions applicable to a particular project. If necessary, attachments to Form PR-2 may be made. This space will also be utilized as follows:

(i) When Federal funds are to participate in the cost of constructing a facility, to reference the agreement required by 23 U.S.C. 129;

(ii) When a Federal agency is to undertake a Federal-aid project, to reference the agreement between the State and such Federal agency required by U.S.C. 132, and to set forth the amount of the State deposit or payment to such Federal agency.

(iii) When a State is to undertake federally financed or assisted work on public lands highways (23 U.S.C. 209) defense access highways (23 U.S.C. 10), to reference the applicable section of Title 23, United States Code.

(iv) When there is an agreement between the State and a local unit of government with provisions for park regulations and traffic control.

(4) For HP&R project, no entry will be made in the space labeled "COUNTY." For all other projects, the county or counties in which the project is located will be shown.

(5) The space labeled "PROJECT TERMINI" is for identifying the location of projects by termini, such as three miles east of Excell to four miles west of Clark." The U.S., State, county route number, if any, shall be shown, or indication given that the project is located on a county or local road. Engineering stations may not be used. Special Highway Planning and Research Projects shall be identified

in this space by project type (National Pooled Fund Studies (NPFS)) or (Intra-Regional Cooperative Studies (IRCS)) and title of the study.

(6) The spaces under the heading "EFFECTIVE DATE OF AUTHORIZATION" will be utilized to show the date subsequent to which any item of cost set forth in the spaces specifically labeled under the heading "PROJECT CLASSIFICATION OR PHASE OF WORK" is eligible for Federal participation.

(7) The space labeled "OTHER" under the heading "PROJECT CLASSIFICATION OR PHASE OF WORK" will be used to set forth a project classification or class of work not specifically labeled in the spaces immediately above "OTHER."

(8) In the spaces labeled "APPROXIMATE LENGTH (Miles)" the length of preliminary engineering and construction work will be shown to the nearest tenth of a mile.

(9) In the space labeled "ESTIMATED TOTAL COST OF PROJECT" the sum of the estimated costs for all project classifications or classes of work set forth above in the agreement as applicable to the particular project will be entered. For construction work, the amount entered will be based on the contract price plus contingencies and/or the force account estimates approved by the Division Administrator.

(10) In the space labeled "FEDERAL FUNDS" the sum of the Federal funds for all project classifications or classes of work as applicable to the particular project will be entered. For bond issue projects and projects to be constructed in advance of apportionments pursuant to 23 U.S.C. 115, the amount entered will be based on an estimate of Federal funds to be subsequently apportioned. Any portion of a project being retained in a "programmed only" status shall not be included in a project agreement.

(d) The original agreement and one copy thereof will be executed by the proper officer of the State highway agency and forwarded to the Division Administrator for review and execution. The Division Administrator will retain the original agreement as part of the project status records. One executed copy will be returned to the

State highway agency. When required by the regional office, a conformed copy will be sent to that office.

(e) HP&R agreements will be prepared and executed when the State has been authorized to proceed with the HP&R work program in whole or in part. If the agreement covers only a part of the work program, it shall be amended at the time or times when the State is authorized to proceed with the remaining part or parts. Agreements for Special Highway Planning and Research projects will be prepared and executed separately from the annual HP&R agreements.

(Approved by the Office of Management and Budget under OMB control number 2125-0529.)

[39 FR 35348, Oct. 1, 1974, as amended at 40 FR 55639, Dec. 1, 1975; 41 FR 33253, Aug. 9, 1976; 49 FR 33008, Aug. 20, 1984]

#### § 630.305 Agreement provisions regarding overruns in contract time.

(a) Assessment of liquidated damages will be by means of deductions, at a specified rate per calendar day or workday for each day of overrun in contract time, from payments otherwise due for performance in accordance with the contract terms.

(b) The Federal Highway Administration has established, based upon its estimate of average construction engineering costs to the State, a schedule of deductions for each day of overrun in contract time. That schedule follows:

##### SCHEDULE OF DEDUCTIONS FOR EACH DAY OF OVERRUN IN CONTRACT TIME

| Original contract amount (or the engineer's estimate of the total construction cost) | Daily charge |          |
|--------------------------------------------------------------------------------------|--------------|----------|
|                                                                                      | Calendar day | Work day |
| 0 to \$25,000.....                                                                   | \$30         | \$42     |
| \$25,000 to \$50,000.....                                                            | 50           | 70       |
| \$50,000 to \$100,000.....                                                           | 75           | 105      |
| \$100,000 to \$500,000.....                                                          | 100          | 140      |
| \$500,000 to \$1,000,000.....                                                        | 150          | 210      |
| \$1,000,000 to \$2,000,000.....                                                      | 200          | 280      |
| \$2,000,000 plus.....                                                                | 300          | 420      |

A State may establish, based upon construction engineering costs applicable to projects in that State, a schedule of liquidated damages in greater or lesser amounts than prescribed in the

schedule set forth above. If a schedule for lesser amounts is established, it may be used in lieu of the schedule set forth above, if the State furnishes the Division Administrator with facts which convince him that the lesser schedule is sufficient to cover average daily construction engineering costs on State Federal-aid highway contracts of similar scope of work and the applicable contract amount. If a schedule for greater amounts is established by a State, that schedule shall be used in lieu of the schedule set forth above.

(c) When there has been an overrun in contract time, the following principles apply to determine the reduction in the amount of the State cost of a project that is eligible for Federal reimbursement:

(1) Where construction engineering is claimed as a participating item on the basis of actual expenses incurred, the State's total construction engineering costs for the total contract construction work eligible for Federal reimbursement shall be reduced rather than the State's pro rata share thereof, by the appropriate amount in the schedule of deductions set forth above for each calendar day or workday as the case may be, of overrun in contract time. Furthermore, the total contract construction amount eligible for Federal participation is to be reduced by the amount the calculated deduction exceeds construction engineering costs.

(2) Where the State is being reimbursed for construction engineering on the basis of an approved percentage of the participating construction cost, where construction engineering is not claimed as a participating item, the total contract construction amount that would be eligible for Federal participation shall be reduced by the appropriate amount in the schedule of deductions set forth above for each calendar day or workday, as the case may be, of overrun in contract time.

[39 FR 35348, Oct. 1, 1974, as amended at FR 55640, Dec. 1, 1975]

**§ 630.306 Modification of original agreement.**

(a) Form PR-2A (Appendix B) shall be used for all amendments to or modifications of the original project agreement. Ordinarily, such modification will be needed only to increase the amount of Federal funds to cover approved changes. At the final voucher stage where modification is necessary only to provide for normal overruns or underruns of previously estimated costs, no additional support is

required. The final voucher will be sufficient for that purpose.

(b) If the modification is for the purpose of revising the estimated total cost of the project and the applicable Federal funds to cover changed conditions not provided for by change orders approved by the Division Administrator, the reason therefor shall be set forth in the space headed "Other revisions."

[39 FR 35348, Oct. 1, 1974, as amended at 40 FR 55640, Dec. 1, 1975]

## APPENDIX A—FEDERAL-AID PROJECT AGREEMENT, FORM PR-2

|                         |                                                                                                                                                                                                  |                                                  |
|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|
| TO BE COMPLETED BY FHWA | <br>U.S. Department of Transportation<br><b>FEDERAL-AID PROJECT AGREEMENT</b><br>Federal Highway Administration | STATE _____<br>COUNTY _____<br>PROJECT NO. _____ |
|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|

The State, through its Highway Agency, having complied, or hereby agreeing to comply, with the applicable terms and conditions set forth in (1) Title 23, U.S. Code, Highways, (2) the Regulations issued pursuant thereto and, (3) the policies and procedures promulgated by the Federal Highway Administrator relative to the above designated project, and the Federal Highway Administration having authorized certain work to proceed as evidenced by the date entered opposite the specific item of work, the funds are obligated for the project not to exceed the amount shown herein, the balance of the estimated total cost being the obligation of the State. Such obligation of Federal funds extends only to project costs incurred by the State after the Federal Administration authorization to proceed with the project involving such costs.

PROJECT TERMINI \_\_\_\_\_

| PROJECT CLASSIFICATION OR PHASE OF WORK | EFFECTIVE DATE OF AUTHORIZATION | APPROPRIATION |
|-----------------------------------------|---------------------------------|---------------|
| HIGHWAY PLANNING AND RESEARCH (HP & R)  |                                 |               |
| PRELIMINARY ENGINEERING                 |                                 |               |
| RIGHTS-OF-WAY                           |                                 |               |
| CONSTRUCTION                            |                                 |               |
| OTHER (Specify) _____                   |                                 |               |

| FUNDS                           |               |
|---------------------------------|---------------|
| ESTIMATED TOTAL COST OF PROJECT | FEDERAL FUNDS |
| \$ _____                        | \$ _____      |

The State further stipulates that as a condition to payment of the Federal funds obligated, it accepts and will comply with the applicable provisions set forth on the following pages.

|                                                                                                                                                                        |                                                                                                                                                                                   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| _____<br><i>(Official name of Highway Agency)</i><br>By _____<br>_____<br><i>(Title)</i><br>By _____<br>_____<br><i>(Title)</i><br>By _____<br>_____<br><i>(Title)</i> | <b>U.S. DEPARTMENT OF TRANSPORTATION</b><br><b>FEDERAL HIGHWAY ADMINISTRATION</b><br>By _____<br><i>(Division Administrator)</i><br>Date executed by Division Administrator _____ |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

FORM PR-2 (REV. 1-84) PREVIOUS EDITIONS ARE OBSOLETE

# AGREEMENT PROVISIONS

1. **RESPONSIBILITY FOR WORK**—a. Except for projects constructed under Certification Acceptance procedures, the State highway agency will perform the work, or cause it to be performed, in compliance with the approved plans and specifications or project proposal which, by reference, are made a part hereof.

b. With regard to projects performed under Certification Acceptance procedures, the State highway agency will perform the work, or cause it to be performed, in accordance with the terms of its approved Certification, or exceptions thereto as may have been approved by the Federal Highway Administration.

2. **HIGHWAY PLANNING AND RESEARCH (P&R) PROJECT**—The State highway agency will (a) conduct or cause to be conducted, under its direct control, engineering and economic investigations of projects for future construction, together with highway research necessary in connection therewith, pursuant to the work program approved by the Federal Highway Administration and (b) prepare reports suitable for publication the result of such investigations and research, but no report will be published without the prior approval of the Federal Highway Administration.

3. **PROJECT FOR ACQUISITION OF RIGHTS-OF-WAY**—In the event that actual construction of a road on this right-of-way is not undertaken by the close of the tenth fiscal year following the fiscal year in which this agreement is executed, the State highway agency will repay to the Federal Highway Administration the sum or sums of Federal funds paid to the highway agency under the terms of this agreement.

4. **PRELIMINARY ENGINEERING PROJECTS**. In the event that right-of-way acquisition for, or actual construction of the road for which this preliminary engineering undertaken is not started by the close of the fifth fiscal year following the fiscal year in which this agreement is executed, the State highway agency will repay to the Federal Highway Administration the sum or sums of Federal funds paid to the highway agency under the terms of this agreement.

5. **INTERSTATE SYSTEM PROJECT**—a. The State highway agency will not add or permit to be added, without the prior approval of the Federal Highway Administration any limits of access to, or exit from, the project in addition to those approved in the plans and specifications for the project.

b. The State highway agency will not permit automotive service stations, or other commercial establishments for serving motor vehicle users, to be constructed or located on the right-of-way of the interstate system.

c. The State highway agency will not after June 30, 1968, permit the construction of any portion of the Interstate Route on which this project is located, including spurs and loops, as a toll road without the written concurrence of the Secretary of Transportation or his officially designated representative. The term 'toll road' does not include toll bridges or toll tunnels.

6. **PROJECT FOR CONSTRUCTION IN ADVANCE OF APPORTIONMENT**—a. This project authorized pursuant to 23 U.S.C. 115 as amended, will be subject to all procedures and requirements, and conform to the standards applicable to projects on the system on which located, financed with the aid of Federal funds.

b. No present or immediate obligation of Federal funds is created by this agreement, its purpose and intent being to provide that, upon application by the State highway agency, and approval thereof by the Federal Highway Administration, any Federal-aid funds of the class designated by the project number prefix, apportioned or allocated to the State under 23 U.S.C. 103(e)(4), 104, or 144 subsequent to the date of this agreement, may be used to reimburse the State for the Federal share of the cost of work done on the project.

7. **STAGE CONSTRUCTION**. The State highway agency agrees that all stages of construction necessary to provide the initially planned complete facility, within the limits of this project, will conform to at least the minimum values set by approved AASHTO design standards applicable to this class of highways, even though such additional work is financed without Federal-aid participation.

8. **BOND ISSUE PROJECT**. Construction, inspection and maintenance of the project will be accomplished in the same manner as for regular Federal-aid projects. No present or immediate obligations is created by this Agreement against Federal funds, its purpose and intent being to provide aid to the State, as authorized by 23 U.S.C. 122, for retiring maturities of the principal indebtedness of the bonds referred to below. When the State requests Federal reimbursement to aid in the retirement of such bonds, the request will be supported by the appropriate certification required by 23 CFR Part 140, Subpart F, and Volume 1, Chapter 4, Section 8 of the Federal-Aid Highway Program Manual, and payment of the authorized Federal share will be made from appropriate funds available. If in any year there is no obligated balance of any apportioned Federal funds available from which payments hereunder may be made, there will be no obligation on the part of the Federal Government on account of bond maturities for that year. Funds available to the highway agency for this project are the proceeds



of bonds issued by the governmental unit indicated on the attached tabulation, pursuant to the authority and in the amounts by date of issue and beginning date of maturities set forth therein.

**9. SPECIAL HIGHWAY PLANNING AND RESEARCH PROJECT.** The State highway agency hereby authorizes the Federal Highway Administration to charge the State's pro rata share of costs incurred against funds apportioned to the State under 23 U.S.C. 307(c), as amended. In the event a project is financed with both Federal-aid funds and State matching funds, the State agrees to advance to The Federal Highway Administration the State matching funds for its share of the estimated cost. For a National Pooled Fund study, the State hereby assigns its responsibility for the work to the Federal Highway Administration. For an Intra-Regional Cooperative Study, the State hereby assigns its responsibility for the work to the lead State for the study.

**10. PARKING REGULATION AND TRAFFIC CONTROL.** The State highway agency will not permit any changes to be made in the provisions for parking regulations and traffic control as contained in the agreement between the State and the local unit of Government referred to in the paragraph on "Additional Provisions," without the prior approval of the Federal Highway Administration, unless the State determines, and the Division Administrator concurs, that the local unit of Government has a functioning traffic engineering unit with the demonstrated ability to apply and maintain sound traffic operations and control.

**11. SIGNING AND MARKING.** The State highway agency will not install, or permit to be installed, any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration pursuant to 23 U.S.C. 109(d) or the State's Certificate as applicable.

**12. MAINTENANCE.** The State highway agency will maintain, or by formal agreement with appropriate officials of a county or municipal government cause to be maintained, the project covered by this agreement.

**13. LIQUIDATED DAMAGES.** The State highway agency agrees that on Federal-aid highway construction projects not under Certification Acceptance the provisions of 23 CFR Part 630, Subpart C and Volume 6, Chapter 3, Section 1 of the Federal-Aid Highway Program Manual, as supplemented, relative to the basis of Federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

**14. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (APPLICABLE TO CONTRACTS AND SUBCONTRACTS WHICH EXCEED \$100,000)**—a. The State highway agency stip-

ulates that any facility to be utilized in performance under or to benefit from agreement is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.

b. The State highway agency agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.

c. The State highway agency stipulates that as a condition of Federal aid pursuant to this agreement it shall notify the Federal Highway Administration of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this agreement is under consideration to be listed on the EPA List of Violating Facilities.

d. The State highway department agrees that it will include or cause to be included in any Federal-aid to highways agreement with a political subdivision of the State which exceeds \$100,000 the criteria and requirements in these subparagraphs through d.

**15. EQUAL OPPORTUNITY.** The State highway agency hereby agrees that it will incorporate or cause to be incorporated into contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor at 29 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on credit of the Federal Government pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance or guarantee, the following equal opportunity clause:

"During the performance of this contract the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway

agency setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a copy to be provided by the State highway agency advising the said labor union or other representative of the contractor's commitments under Section 202 of the Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and permit access to his books, records and files by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be terminated, suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of Section 202 of Executive Order 11246 of September 24, 1965, in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding on each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the highway agency or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; *Provided, however,*

that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

The State highway agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The State highway agency also agrees:

(1) To assist and cooperate actively with the Federal Highway Administration and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor.

(2) To furnish the Federal Highway Administration and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the Federal Highway Administration in the discharge of its primary responsibility for securing compliance.

(3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order.

(4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the Federal Highway Administration or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

In addition, the State highway agency agrees that if it fails or refuses to comply with these undertakings, the Federal Highway Administration may take any or all of the following actions:

(a) Cancel, terminate, or suspend this agreement in whole or in part;

(b) Refrain from extending any further assistance to the State highway agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the State highway agency; and

(c) Refer the case to the Department of Justice for appropriate legal proceedings.

16. **NONDISCRIMINATION.** The State highway agency (SHA) hereby agrees that it will comply with Title VI of the 1964 Civil Rights Act and related statutes and implementing regulations to the end that no person shall on the grounds of race, color, national origin, handicap, age, sex, or religion be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the project covered by this agreement and, further, the SHA agrees that:

a. It will insert the nondiscrimination notice required by the Standard Department of Transportation (DOT) Title VI Assurance (DOT Order 1050.2) in all solicitations for bids for work or material, and, in adapted form, in all proposals for negotiated agreements.

b. It will insert the clauses in Appendixes A, B, or C of DOT Order 1050.2, as appropriate, in all contracts, deeds transferring real property, structures, or improvements thereon or interest therein (as a covenant running with the land) and in future deeds, leases, permits, licenses, and similar agreements, related to this project, entered into by the SHA with other parties.

c. It will comply with, and cooperate with, FHWA in ensuring compliance with the terms of the standard Title VI Assurance, the act and related statutes, and implementing regulations.

17. **MINORITY BUSINESS ENTERPRISES (MBE's).**—a. The State highway agency hereby agrees to the following statements and agrees that these statements shall be included in all subsequent agreements between the recipient and any subrecipient and in all subsequent DOT-assisted contracts between recipients or subrecipients and any contractor:

(1) "Policy. It is the policy of the Department of Transportation that minority business enterprises (MBE's), as they are defined in 49 CFR Part 23 [for the purposes of 49 CFR Part 23, Subpart D, MBE's refer to disadvantaged business enterprises (DBE's); for the purposes of other subparts of Part 23, MBE's include women's business enterprises (WBE's)], shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, all applicable requirements of 49 CFR Part 23 apply to this agreement.

(2) "Obligation. The recipient or its contractor agrees to ensure that MBE's, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance

with the applicable section of 49 CFR Part 23 to ensure that MBE's have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, handicap, age, or sex, as provided in Federal State law, in the award and performance of DOT-assisted contracts."

b. If, as a condition of assistance, the recipient has submitted and the Department has approved an MBE affirmative action program which the recipient agrees to carry out, this program is incorporated into the financial assistance agreement by reference. This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance agreement. Upon notification of the recipient of its failure to carry out the approved program, the Department may impose such sanctions as are noted in 49 CFR Part 23, Subparts D or E, which sanctions may include termination of the agreement or other measures that may affect the ability of the recipient to obtain future DOT financial assistance.

18. **BICYCLE TRANSPORTATION AND DESTRAN WALKWAYS.** No motorized vehicles shall be permitted on bikeways or paths authorized under this project except for maintenance purposes and, when authorized, under State or local regulations, permit, snowmobiles.

19. **MODIFIED OR TERMINATED HIGHWAY PROJECTS.** For certain projects described in 23 CFR Part 480 or as prescribed in the parts of Title 23, Code of Federal Regulations, the payback provisions found in the parts shall supersede provisions 3 and 4 in this agreement.

20. **ENVIRONMENTAL IMPACT MITIGATION FEATURES.** The State highway agency shall ensure that the project is constructed in accordance with and incorporates all required environmental impact mitigation measures listed in approved environmental agreements unless the State requests and receives written Federal Highway Administration approval to modify or delete such mitigation features.

#### ADDITIONAL PROVISIONS

[49 FR 33009, Aug. 20, 1984]

## APPENDIX B—MODIFICATION OF FEDERAL-AID PROJECT AGREEMENT, FORM PR-2A

|                                                                                                                      |                                                                                                                                     |                                                                                |
|----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| <b>TO BE COMPLETED BY FHWA</b><br>MONTHLY TRANSACTION NUMBER<br><br>PROJECT REPORT NUMBER<br><br>MODIFICATION NUMBER | U.S. DEPARTMENT OF TRANSPORTATION<br>FEDERAL HIGHWAY ADMINISTRATION<br><br><b>MODIFICATION OF FEDERAL-AID<br/>PROJECT AGREEMENT</b> | Form Approved; O M B No. 04-R2089<br>State<br><br>County<br><br>Project Number |
|----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|

The Project Agreement for the above-referenced project entered into between the undersigned parties and executed by the Division Administrator on \_\_\_\_\_, 19\_\_\_\_

is hereby modified as follows:

|                                 | Former amount | Revised amount |
|---------------------------------|---------------|----------------|
| Estimated total cost of project | \$ _____      | \$ _____       |
| Federal funds                   | \$ _____      | \$ _____       |
| Other revisions                 |               |                |

This modification is made for the following reasons:

\_\_\_\_\_

All other terms and conditions of the Project Agreement will remain in full force and effect. This modification is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(Official name of Highway Agency)

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

By \_\_\_\_\_

(Division Administrator)

## APPENDIX C—FEDERAL-AID PROJECT AGREEMENT (NATIONAL COOPERATIVE HIGHWAY RESEARCH PROGRAM), FORM PR-2.1

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                   |                                    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|------------------------------------|
| <b>U.S. DEPARTMENT OF TRANSPORTATION</b><br><b>FEDERAL HIGHWAY ADMINISTRATION</b><br><br><b>FEDERAL-AID PROJECT AGREEMENT</b><br>(National Cooperative Highway Research Program)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                   | 1. STATE<br><br>2. PROJECT NUMBER  |
| <b>SECTION I—AGREEMENT PROVISIONS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                   |                                    |
| <p>In conformance with arrangements for financing the National Cooperative Highway Research Program hereinafter referred to as the "NCHRP," pursuant to the Memorandum Agreement effective June 29, 1962, as amended, between the Federal Highway Administration, hereinafter referred to as "FHWA," the American Association of State Highway and Transportation Officials, hereinafter referred to as "AASHTO," and the National Academy of Sciences, hereinafter referred to as the "Academy"; the State formally consents to providing the funds stated in this agreement as its contribution towards financing expenditures incurred in conducting the NCHRP in accordance with the Memorandum Agreement.</p> <p>In accordance with the action taken by AASHTO requesting the Academy, through its Transportation Research Board to administer the NCHRP, the State authorizes FHWA to charge the State's pro rata share of the costs incurred against the funds stated in this agreement.</p> <p>It is understood that FHWA will make payments to the Academy for the State's share of the cost of the program pursuant to the State-Academy Agreement for the current fiscal year and the Fiscal Agreement entered into between the FHWA on July 1, 1962.</p> <p>In the event the State's contribution towards the cost of the NCHRP is to be financed with both Federal aid funds and State-matching funds, the State agrees to advance the FHWA the State-matching funds its share of the estimated cost.</p> |                                                                                   |                                    |
| <b>SECTION II—FUNDS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                   |                                    |
| 3. ESTIMATED TOTAL COST OF PROJECT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 4. FEDERAL FUNDS                                                                  | 5. EFFECTIVE DATE OF AUTHORIZATION |
| <b>SECTION III—AGREEMENT AND SIGNATURES</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                   |                                    |
| <p>The State, through its Highway Agency, and the Federal Highway Administration agree to the above provisions.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                   |                                    |
| _____<br>(Official Name of the Highway Agency)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>U.S. DEPARTMENT OF TRANSPORTATION</b><br><b>FEDERAL HIGHWAY ADMINISTRATION</b> |                                    |
| BY _____<br><br>_____<br>(Title)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | BY _____<br><br>_____<br>(Title)                                                  |                                    |
| BY _____<br><br>_____<br>(Title)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | _____<br>Date Executed                                                            |                                    |
| BY _____<br><br>_____<br>(Title)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                   |                                    |

**Subpart D—Geodetic Markers**

SOURCE: 39 FR 28414, July 19, 1974, unless otherwise noted.

**§ 630.401 Purpose.**

The purpose of this subpart is to prescribe procedures for conducting geodetic control surveys when participation with Federal-aid highway funds—the cost thereof is proposed and to encourage inter-agency cooperation in setting station markers, surveying to ensure their position, and preserving geodetic control so established.

**§ 630.402 Policy.**

(a) Geodetic surveys along Federal-aid highway routes may be programmed as Federal-aid highway projects.

(b) All geodetic survey work performed as a Federal-aid highway project will conform to National Ocean Survey (NOS) specifications. The SHA will, as the representative of FHWA, be responsible for the inspection and verification of the work to ascertain that the specifications for the project have been met. Final project acceptance by FHWA will be predicated on a finding of acceptability by NOS.

**§ 630.403 Initiation of projects.**

All projects shall be coordinated by the FHWA Division Administrator, the State highway department and the National Ocean Survey.

**§ 630.404 Standards.**

(a) Highway purposes may best be served by the establishment of station markers for horizontal control along Federal-aid highway routes at spacings of three to eight kilometers (about 2 to 5 miles) and station markers for vertical control of spacings no greater than one kilometer. These requirements may be waived only with the approval of the Administrator.

(b) Projects should be of sufficient scope to permit efficient use of field parties. Projects should extend at least 30 kilometers. Projects may be coordinated with adjoining States to obtain greater efficiency.

(c) Where geodetic station markers cannot be established initially at points readily accessible from the Fed-

eral-aid route, or where unavoidable circumstances result in their being established within construction limits, supplemental projects may later be approved to set and survey markers at satisfactory permanent points, preferably within the right-of-way but at points where their use does not introduce traffic hazards.

**Subparts E-F—[Reserved]****Subpart G—Advance Construction of Federal-Aid Projects**

SOURCE: 48 FR 54974, Dec. 8, 1983, unless otherwise noted.

**§ 630.701 Purpose.**

To prescribe procedures for the construction of projects by a State highway agency (SHA) on any highway substitute, Federal-aid system, or bridge project, in advance of apportionment of Federal-aid funds, or in lieu of apportioned funds for the Interstate System only, and for the subsequent reimbursement to the SHA of the Federal share of the cost of the project, including the payment of interest on bonds of eligible Interstate projects for which proceeds of bonds were expended in the construction of the projects.

**§ 630.702 Requirements and conditions.**

(a) The SHA must have obligated all funds apportioned or allocated to it under 23 U.S.C. 103(e)(4), 104, or 144, other than Interstate funds, of the particular class of funds for which the project is proposed.

(b) The SHA may proceed to construct without the aid of Federal funds any highway substitute, Federal-aid system, or bridge project in the same manner and to the same extent as a regularly funded federally participating project, subject to the following provisions:

(1) Any such project shall conform to the applicable standards adopted for roads on that system on which the project is located.

(2) The plans and specifications shall be approved prior to construction in the same manner as for other

projects on the Federal-aid system involved.

(3) The prevailing wage rate provisions of 23 U.S.C. 113, as amended, shall apply.

(c) Advance construction projects are limited to the SHA's expected apportionments for 23 U.S.C. 103(e)(4), 104, or 144 of Federal-aid funds authorized by the Congress but not yet apportioned to the States.

(d) Any interest earned and payable on bonds issued by a State, county, city, or other political subdivision, the proceeds of which were expended on a project on the Interstate system under physical construction on January 1, 1983, and converted to a regularly funded project after January 1, 1983, is an eligible cost of construction as provided for in 23 U.S.C. 115(b)(2) to the extent that the bond proceeds were actually expended in the construction of an Interstate project. The amount of interest eligible for participation will be based on: (1) The date the proceeds were expended on the project, (2) amount expended, and (3) the date of conversion to a regularly funded project or the date of bond maturity, whichever is earlier.

(e) Interest earned and payable on bonds issued by a State after January 6, 1983, to the extent such bond proceeds were actually expended in the advance physical construction of Interstate projects may be considered an eligible cost of construction in accordance with 23 U.S.C. 115(b)(3). Eligibility for participation will be based on: (1) The date the bond proceeds were expended on the project, (2) amount expended, and (3) the date of bond maturity. The amount of interest allowable as a cost of construction is limited to the excess of the estimated cost of the physical construction of the project as if it were to be constructed at the time of conversion to a regularly funded project over the actual cost of construction of the project (excluding interest). Construction cost indices will be used to determine the cost of construction at the time of conversion to a regularly funded project.

(f) The authorization of an advance construction project does not constitute a commitment of Federal funds

until the project is converted to a regular Federal-aid project as for in § 630.708.

#### § 630.703 Programs.

Programs for advance construction projects shall be prepared and conducted in the manner prescribed for regular-aid projects. Project descriptions shall be the same as for regular-aid projects except that when a project is converted to a regular-aid project, the prefix "AC" for advance construction shall be used as the first letters of the project designation.

#### § 630.704 Bond proceeds expended on projects.

(a) The SHA shall include in its request for conversion action in accordance with § 630.708 a certification which provides a listing of the bond proceeds of which have been expended on a project on the Interstate system under physical construction on January 1, 1983, and converted to a regularly funded project after January 1, 1983. The certification will include bond amounts, maturity dates, and bond interest payable.

(b) The SHA shall indicate in its request for approval of plans, specifications, and estimates (PS&E) the state projects if bond proceeds were expended on the project, the date issued after January 6, 1983, to be expended, and estimated bond interest payable. A certification provides a listing of the bond proceeds expended or to be expended on the project showing bond amounts, maturity dates, and bond interest payable. The information shall be furnished either as a part of the PS&E submission or in a separate letter to the Division Administrator.

(c) The Division Administrator shall perform adequate reviews of the SHA's records to provide assurance that bond proceeds have been expended on the projects in accordance with the listing in § 630.704(a) and (b).

#### § 630.705 Approval actions.

(a) Authorizations to proceed with preliminary engineering and construction of rights-of-way shall be

in the same manner as for regularly financed Federal-aid projects.

(b) Authorization of physical construction shall be given in the same manner as for regularly financed Federal-aid projects, subject to the provisions of § 630.704(a).

(c) Concurrence in the award of contracts shall be given.

#### § 630.706 Project agreements.

Project agreements, Form PR-2, Federal-aid Project Agreement, shall be prepared and executed. Agreement Form 6 on the reverse side of Form PR-2 shall apply for advance construction projects.

FR 54974, Dec. 8, 1983; 48 FR 56215, 20, 1983]

#### § 630.707 Construction.

Construction shall be supervised by the SHA in the same manner as for regularly financed Federal-aid projects. The Federal Highway Administration (FHWA) will make construction inspections and reports.

§ 630.708 Conversion from advance construction status to regular Federal-aid funded status.

An advance construction project may be converted to a regularly financed Federal-aid project by approval of a SHA's written request when sufficient obligational authority apportioned Federal-aid funds of a particular class are available to the Federal pro rata share of the project. Approval of the conversion action shall be by the Division Administrator.

#### § 630.709 Progress and final vouchers.

(a) Progress or final vouchers may be submitted for the Federal share of construction costs incurred on advance construction projects after conversion including eligible interest costs on interstate projects.

(b) Although reimbursement cannot be made until after conversion action is completed, a final voucher shall be submitted by the SHA upon completion of an advance construction project which has not been converted

to a regularly funded project. After final review, the SHA will be advised as to the total cost and Federal fund participation in the project when conversion is accomplished. Such final vouchers shall be retained until conversion of the project is accomplished.

(c) The final voucher shall contain a certification that bond proceeds were expended in the construction of the project as described in § 630.704 (a) or (b) and shall include a computation of the eligible interest costs in accordance with § 630.702 (d) or (e).

#### § 630.710 Cash management.

By July 1 of each year, the SHA will provide FHWA with a schedule, including the anticipated claims for reimbursement, of advance construction projects to be converted during the next two fiscal years. The data will be used by FHWA in determining liquidating cash required to finance such conversions.

### Subpart H—Bridges on Federal Dams

SOURCE: 39 FR 36474, Oct. 10, 1974, unless otherwise noted.

#### § 630.801 Purpose.

The purpose of this subpart is to prescribe procedures for the construction and financing, by an agency of the Federal Government, of public highway bridges over dams constructed and owned by or for the United States.

#### § 630.802 Applicability.

A proposed bridge over a dam, together with the approach roads to connect the bridge with existing public highways, must be eligible for inclusion in the Federal-aid highway system, if not already a part thereof.

#### § 630.803 Procedures.

A State's application to qualify a project under this subpart will include:

(a) A certification that the bridge is economically desirable and needed as a link in the Federal-aid highway system.

(b) A statement showing the source and availability of funds to be used in

The text of FHWA Form PR-2 is found in 49 CFR Part 630, Subpart C, Appendix A.



construction of the roadway approaches.

(c) A statement of any obligation on the part of the agency constructing the dam to provide such bridge or approach roads to satisfy a legal liability incurred independently of this subpart.

### Subpart I—[Reserved]

### Subpart J—Traffic Safety in Highway and Street Work Zones

**AUTHORITY:** 23 U.S.C. 109(b), 109(d), 315, and 402(a); 23 CFR 1.48(b), unless otherwise noted.

**SOURCE:** 43 FR 47140, Oct. 12, 1978, unless otherwise noted.

#### § 630.1002 Purpose.

The purpose of this subpart is to provide guidance and establish procedures to assure that adequate consideration is given to motorists, pedestrians, and construction workers on all Federal-aid construction projects.

#### § 630.1004 Background.

Part VI of the manual on uniform traffic control devices (MUTCD)<sup>1</sup> sets forth basic principles and prescribes standards for the design, application, installation, and maintenance of the various types of traffic control devices for highway and street construction, maintenance operation, and utility work. The manual cannot address in depth the variety of situations that occur in providing traffic control in work zones. Although agencies responsible for traffic control and work area protection have attempted to develop some guidelines, a coordinated and comprehensive effort to develop greater uniformity is desirable. National reviews have shown that more attention is needed to insure that the MUTCD is properly implemented on all highway projects.

<sup>1</sup> The MUTCD is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. It is incorporated by reference at 23 CFR 625.3.

#### § 630.1006 Policy.

It is the policy of the Federal Highway Administration that each highway agency shall develop and implement procedures consonant with requirements of this regulation will assure the safety of motorists, pedestrians, and construction workers on Federal-aid highway construction projects. The procedures shall be consistent with the provisions of MUTCD. Highway agencies should be encouraged to implement these procedures for non-Federal-aid projects and maintenance operations as well.

#### § 630.1008 Implementation.

The FHWA Division Administrator shall review and approve the highway agency's implementation of its procedures at appropriate intervals. The FHWA shall take appropriate action to assure that the highway agency's procedures are being followed to achieve the results intended. Major revisions in established procedures shall be submitted to the FHWA Division Administrator for information.

#### § 630.1010 Contents of the agency procedures.

The agency's procedures shall include, but not necessarily be limited to, the following:

(a) *Traffic control plan (TCP).* A traffic control plan is a plan for handling traffic through a specific highway or street work zone or project. These plans may range in scope from very detailed TCP designed solely for a specific project, to a reference standard plans, a section of the MUTCD, or a standard highway agency manual. The degree of detail the TCP will depend on the project complexity and traffic interference with construction activity.

(2) Traffic control plans shall be developed for all projects and be included in plans, specifications, and estimates (P.S. & E.'s) and shall be consistent with part VI of the MUTCD.

(3) The scope of the TCP should be determined during planning and design phases of a project.

(4) Provisions may be made to permit contractors to develop their own TCP's and use them if the highway

may agency and FHWA find that these plans are as good as or better than those provided in the P.S. & E.

(5)(i) Two-lane, two-way operation on one roadway of a normally divided highway (TLTWO) shall be used only after careful consideration of other available methods of traffic control. Where the TLTWO is used, the TCP shall include provisions for the separation of opposing traffic except:

(A) Where the TLTWO is located on a urban type street or arterial where operating speeds are low;

(B) Where drivers entering the TLTWO can see the transition back to normal one-way operation on each roadway; or

(C) Where FHWA approves nonuse separation devices based on unusual circumstances.

ii) Center line striping, raised pavement markers, and complementary signing, either alone or in combination, are not considered acceptable for separation purposes.

b) *Responsible person.* The highway agency shall designate a qualified person at the project level who will be the primary responsibility and efficient authority for assuring that the TCP and other safety aspects of the contract are effectively administered. While the project or resident engineer may have this responsibility, on large complex projects another person should be assigned at the project level to handle traffic control on a full-time basis.

c) *Pay items.* The P.S. & E. should include unit pay items for providing, installing, moving, replacing, maintaining, and cleaning traffic control devices required by the TCP. Suitable accounting procedures may be utilized for traffic control items. Lump-sum method of payment should be used only to cover very small projects, projects of short duration, contingencies and general items. Payment for traffic control items as incidental to other items of work should be discouraged.

d) *Training.* All persons responsible for the development, design, implementation, and inspection of traffic control shall be adequately trained.

e) *Process review and evaluation.* A review team consisting of appropriate

highway agency personnel shall annually review randomly selected projects throughout its jurisdiction for the purpose of assessing the effectiveness of its procedures. The agency may elect to include an FHWA representative as a member of the team. The results of this review are to be forwarded to the FHWA Division Administrator for his review and approval of the highway agency's annual traffic safety effort.

(2) Construction zone accidents and accident data shall be analyzed and used to continually correct deficiencies which are found to exist on individual projects, and to improve the content of future traffic control plans.

(23 U.S.C. 109(b), 109(d), 315, and 402(a); 49 CFR 1.48(b))

[43 FR 47140, Oct. 12, 1978, as amended at 47 FR 21780, May 20, 1982]

## PART 633—REQUIRED CONTRACT PROVISIONS

### Subpart A—Federal-Aid Construction Contracts (Other Than Appalachian Contracts)

Sec.

633.101 Purpose.

633.102 Applicability.

633.103 Payrolls, weekly statements, and labor summaries.

633.104 Subletting or assigning the contract.

633.105 Notices to prospective Federal-aid construction contractors (Appendix B).

633.106 Termination of contract.

633.107 Implementation of the Clean Air Act and the Federal Water Pollution Control Act.

APPENDIX A—REQUIRED CONTRACT PROVISIONS, FEDERAL-AID CONSTRUCTION CONTRACTS (EXCLUSIVE OF CERTIFICATION ACCEPTANCE AND APPALACHIAN CONTRACTS)

APPENDIX B—FEDERAL-AID PROPOSAL NOTICES; NOTICES TO PROSPECTIVE FEDERAL-AID CONSTRUCTION CONTRACTORS

### Subpart B—Federal-Aid Contracts (Appalachian Contracts)

633.201 Purpose.

633.202 Definitions.

633.203 Applicability of existing laws, regulations, and directives.

633.204 Fiscal allocation and obligations.

633.205 Prefinancing.

633.206 Project agreements.

633.207 Construction labor and materials.

Sec.

- 633.208 Maintenance.
- 633.209 Notices to prospective Federal-aid construction contractors.
- 633.210 Termination of contract.
- 633.211 Implementation of the Clean Air Act and the Federal Water Pollution Control Act.

**APPENDIX A—TYPES OF CONTRACTS TO WHICH THE CIVIL RIGHTS ACT OF 1964 IS APPLICABLE**

**APPENDIX B—REQUIRED CONTRACT PROVISIONS, APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROAD CONSTRUCTION CONTRACTS**

**APPENDIX C—ADDITIONAL REQUIRED CONTRACT PROVISIONS, APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROADS CONTRACTS OTHER THAN CONSTRUCTION CONTRACTS**

**APPENDIX D—FEDERAL-AID PROPOSAL NOTICES; NOTICES TO PROSPECTIVE FEDERAL-AID CONSTRUCTION CONTRACTORS**

**Subpart C—Direct Federal Construction Contracts**

- 633.301 Purpose.
- 633.302 Applicability.

**APPENDIX A—CONTINUATION OF STANDARD FORM 19-A LABOR STANDARDS PROVISIONS**

**Subpart A—Federal-Aid Construction Contracts (Other Than Appalachian Contracts)**

**AUTHORITY:** 23 U.S.C. 315; 49 CFR 1.48(b)(35).

**SOURCE:** 39 FR 20371, June 10, 1974, unless otherwise noted.

**§ 633.101 Purpose.**

The purpose of the regulation in this subpart is to prescribe, for Federal-aid construction contracts, required contract provisions covering employment, record of materials and supplies, subletting or assigning the contract, safety, false statements concerning highway projects, termination of contract, and implementation of the Clean Air Act and the Federal Water Pollution Control Act, and to prescribe Federal-aid proposal notices relative to nonsegregated facilities and implementation of the Clean Air Act and the Federal Water Pollution Control Act.

[40 FR 42867, Sept. 17, 1975]

**§ 633.102 Applicability.**

Form PR-1273 "Required Contract Provisions, Federal-Aid Construction Contracts" (Appendix A) shall be made a part of, and incorporated into, each highway construction contract that involves the expenditure of Federal funds (other than direct Federal Certification Acceptance, and Appalachian construction contracts).

**§ 633.103 Payroll, weekly statements, labor summaries.**

For all projects, copies of pay and weekly statements with respect to the wages paid during the preceding weekly payroll period, filed with the State as set forth in the Required Contract Provisions for the project, are to be retained by the State highway department for the period set forth in Appendix A to 23 CFR 17 with respect to the particular project, for review as needed by the Federal Highway Administration, the Department of Labor, the General Accounting Office, or other agency at any time during such period.

**§ 633.104 Subletting or assigning the contract.**

The subcontracting limitations set forth in 23 CFR 635.113(b) are included in Appendix A. Exceptions to the limitations to permit a greater percentage of work to be subcontracted may be authorized as provided in 23 CFR 635.113(d). The State may require a contractor to perform with its own organization a percentage of work greater than 50 percent if it so desires.

[39 FR 20371, June 10, 1974, as amended; 40 FR 42867, Sept. 17, 1975]

**§ 633.105 Notices to prospective Federal-aid construction contractors (Appendix B).**

The State Highway Department shall include the notices concerning "Certification of Nonsegregated Facilities" and "Implementation of Clean Air Act and Federal Water Pollution Control Act", set forth in Appendix A, in all future bidding proposals for Federal-aid highway construction projects.

[40 FR 42867, Sept. 17, 1975]

**§ 633.106 Termination of contract.**

All contracts exceeding \$2,500 shall contain suitable provisions for termination by the State, including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

**§ 633.107 Implementation of the Clean Air Act and Federal Water Pollution Control Act.**

Pursuant to regulations of the United States Environmental Protection Agency (40 CFR Part 15) implementing requirements with respect to the Clean Air Act and Federal Water Pollution Control Act are included in Appendix A.

40 FR 42867, Sept. 17, 1975]

**APPENDIX A—REQUIRED CONTRACT PROVISIONS, FEDERAL-AID CONSTRUCTION CONTRACTS (EXCLUSIVE OF CERTIFICATION ACCEPTANCE AND APPALACHIAN CONTRACTS)**

|                                                                                  | Page |
|----------------------------------------------------------------------------------|------|
| I. Application .....                                                             | 1    |
| II. Equal Opportunity .....                                                      | 1    |
| III. Nonsegregated Facilities .....                                              | 2    |
| IV. Payment of Predetermined Minimum Wages .....                                 | 2    |
| V. Statements and Payrolls .....                                                 | 3    |
| VI. Record of Materials, Supplies and Labor .....                                | 3    |
| VII. Subletting or Assigning the Contract .....                                  | 4    |
| VIII. Safety, Accident Prevention .....                                          | 4    |
| IX. False Statements Concerning Highway Projects .....                           | 5    |
| X. Implementation of Clean Air Act and Federal Water Pollution Control Act ..... | 5    |

**I. APPLICATION**

1. These contract provisions shall apply to all work performed on the contract by the contractor with his own organization and with the assistance of workmen under his immediate superintendence and to all work performed on the contract by piecework, station work or by subcontract.

2. The contractor shall insert in each of his subcontracts all of the stipulations contained in these Required Contract Provisions and also a clause requiring his subcontractors to include these Required Contract

Provisions in any lower tier subcontracts which they may enter into, together with a clause requiring the inclusion of these provisions in any further subcontracts that may in turn be made. The Required Contract Provisions shall in no instance be incorporated by reference.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be grounds for termination of the contract.

4. A breach of the following clauses may also be grounds for debarment as provided in 29 CFR 5.6(b):

Section 1, paragraph 2;

Section IV, paragraphs 1, 2, 3, 5 and 7;

Section V, paragraphs 1, 5a, 5b, and 5d.

**II. EQUAL OPPORTUNITY**

1. *Selection of Labor:* During the performance of this contract, the contractor shall not discriminate against labor from any other State, possession or territory of the United States.

2. *Employment Practices:* During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractors' commitments under this section II-2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of Septem-

ber 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of this Section II-2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. *Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment:* During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

a. *Compliance With Regulations:* The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are

herein incorporated by reference and made a part of this contract.

b. *Nondiscrimination:* The contractor with regard to the work performed by during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

c. *Solicitations for Subcontracts, Including Procurements of Materials and Equipment:* In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.

d. *Information and Reports:* The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, and other sources of information and its facilities, as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. *Sanctions for Noncompliance:* In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

(1) Withholding of payments to the contractor under the contract until the contractor complies, and/or

(2) Cancellation, termination or suspension of the contract, in whole or in part.

f. *Incorporation of Provisions:* The contractor shall include the provision of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with

respect to any subcontractor or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

### III. NONSEGREGATED FACILITIES

(Applicable to Federal-aid construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.)

By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, or material supplier, as appropriate, certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. He agrees that (except where he has obtained identical certifications from proposed subcontractors and material suppliers for specific time periods), he will obtain identical certification from proposed subcontractors or material suppliers prior to the award of subcontracts or the consummation of material supply agreements, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.

### IV. PAYMENT OF PREDETERMINED MINIMUM WAGES

1. *General:* All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR, Part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

2. *Classification:* a. The State highway department contracting officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the State highway department contracting officer to the Secretary of Labor.

b. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of the State highway department contracting officer shall be referred to the Secretary for final determination.

3. *Payment of Fringe Benefits:* a. The State highway department contracting officer shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the

interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determination.

b. If the contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract: *Provided, however*, the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. *Payment of Excess Wages:* While the wage rates shown are the minimum rates required by the contract to be paid during its life, this is not a representation that labor can be obtained at these rates. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed herein.

5. *Apprentices and Trainees (Programs of Department of Labor):* a. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in 29 CFR 5.2(c)(2) or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the State highway agency or to a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the jour-

neyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

b. Trainees, except as provided in 29 CFR 5.15, will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the State highway agency or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. The utilization of apprentices, trainees and journeymen shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

6. *Apprentices and Trainees (Programs Department of Transportation):* Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal employment opportunity in connection with Federal-aid highway construction programs are not subject to the requirements of Section IV, paragraph above. The straight time hourly wage rate for apprentices and trainees under such programs will be established by the particular programs.

7. *Overtime Requirements:* No contracts or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen or guards (including appren-

ices and trainees described in paragraphs 5 and 6 above) shall require or permit any laborer, mechanic, watchman or guard in any workweek in which he is employed on such work, to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer, mechanic, watchman or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.

**4. Violations: Liability for Unpaid Wages; Liquidated Damages:** In the event of any violation of the clause set forth in paragraph 7, the contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to each District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 7.

**5. Withholding for Unpaid Wages:** The State highway department contracting officer may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers, mechanics (including apprentices and trainees) watchmen, or guards employed by the contractor or any subcontractor on the work the full amount of wages required by the contract. In the event of failure to pay any laborer, mechanic, (including apprentices and trainees) watchman or guard employed or working on the site of the work, all or part of the wages required by the contract, the State highway department contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**10. Withholding for Liquidated Damages:** The State highway department contracting officer may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages as provided in the clause set forth in paragraph 8.

## V. STATEMENTS AND PAYROLLS

**1. Compliance with Copeland Regulation (29 CFR, Part 3):** The contractor shall comply with the Copeland Regulations (29 CFR, Part 3) of the Secretary of Labor which are herein incorporated by reference.

**2. Weekly Statement:** Each contractor or subcontractor shall furnish each week a statement to the State highway department resident engineer with respect to the wages paid each of its employees, (including apprentices and trainees described in Section IV, paragraphs 5 and 6, and watchmen and guards) engaged on work covered by the Copeland Regulations during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. Contractors and subcontractors must use the certification set forth on U.S. Department of Labor Form WH-348, or the same certification appearing on the reverse of Optional U.S. Department of Labor Form WH-347, or on any form with identical wording.

**3. Final Labor Summary:** The contractor and each subcontractor shall furnish, upon the completion of the contract, a summary of all employment, indicating, for the completed project, the total hours worked and the total amount earned. This data shall be submitted to the State highway department resident engineer on Form PR-47 together with the data required in Section VI, hereof, relative to materials and supplies. The provisions of this paragraph are not applicable to contracts for secondary highways or contracts financed solely with funds provided by the Highway Beautification Act of 1965, as amended.

**4. Final Certificate:** Upon completion of the contract, the contractor shall submit to the State highway department contracting officer, for transmission to the Federal Highway Administration with the voucher for final payment for any work performed under the contract, a certificate concerning wages and classifications for laborers, mechanics, watchmen and guards employed on the project, in the following form:

\* \* \* \* \*

The undersigned, contractor on

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(Project No.)

hereby certifies that all laborers, mechanics, apprentices, trainees, watchmen and guards employed by him or by any subcontractor performing work under the contract on the project have been paid wages at rates not less than those required by the contract



provisions, and that the work performed by each such laborer, mechanic, apprentice or trainee conformed to the classification set forth in the contract or training program provisions applicable to the wage rate paid.

Signature and title \_\_\_\_\_

\* \* \* \* \*

**5. Payrolls and Payroll Records:** a. Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers, mechanics, apprentices, trainees, watchmen and guards working at the site of the work.

b. The payroll records shall contain the name, social security number and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits.

c. The payrolls shall contain the following information:

(1) The employee's full name, address and social security number. (The employee's full name and social security number need only appear on the first payroll on which his name appears. The employee's address need only be shown on the first submitted payroll on which the employee's name appears, unless a change of address necessitates a submittal to reflect the new address.)

(2) The employee's classification.

(3) Entries indicating the employee's basic hourly wage rate and, where applicable, the overtime hourly wage rate. The payroll should indicate separately the amounts of employee and employer contributions to fringe benefit funds and/or programs. Any fringe benefits paid to the employee in cash must be indicated. There is no prescribed or mandatory form for showing the above information on payrolls.

(4) The employee's daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted).

(5) The itemized deductions made and

(6) The net wages paid.

d. The contractor will submit weekly copy of all payrolls to the State highway department resident engineer. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. Submission of a weekly statement which is required under this contract by Section V, paragraph 2, of the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor pursuant to Section IV, paragraph 3b, shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor shall make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the State highway department, the Federal Highway Administration and the Secretary of Labor, and will permit such representatives to interview employees during working hours on the job.

e. The wages of labor shall be paid in full to the tender of the United States, except that this condition will be considered satisfied if payment is made by negotiable check, on a bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the contractor shall make all necessary arrangements for them to be cashed and shall give information regarding such arrangements.

f. No fee of any kind shall be asked or accepted by the contractor or any of his agents from any person as a condition of employment on the project.

g. No laborers shall be charged for tools used in performing their respective duties except for reasonably avoidable loss or damages thereto.

h. Every employee on the work covered by this contract shall be permitted to lodge, board and trade where and with whom he elects and neither the contractor nor his agents, nor his employees shall, directly or indirectly, require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.

i. No charge shall be made for any transportation furnished by the contractor or his agents, to any person employed on the work.

j. No individual shall be employed as a laborer or mechanic on this contract except

on a wage basis, but this shall not be construed to prohibit the rental of teams, trucks, or other equipment from individuals.

#### 1. RECORD OF MATERIALS, SUPPLIES AND LABOR

1. The provisions in this section are applicable to all contracts except contracts for secondary highways and contracts financed solely with funds provided by the Highway Authorization Act of 1965, as amended.

2. The contractor shall maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work and also of the quantities of those specific materials and supplies listed on Form PR-47 and in the units shown. Upon completion of the contract, this record, together with the final labor summary referred to in Section V, paragraph 3, hereof, shall be transmitted to the State highway department resident engineer for the project on Form PR-47 in accordance with the instructions attached thereto, which will be furnished for this purpose upon request. The quantities for the listed items shall be reported separately for roadway and for structures over 20 feet long as measured by the centerline of the roadway.

3. The contractor shall become familiar with the list of specific materials and supplies contained in Form PR-47 prior to the commencement of work under this contract. Additional materials information required shall be solicited through revisions of Form PR-47 with attendant explanations. Where subcontractors are involved the contractor shall submit either a single report covering work both by himself and his subcontractors, or he may submit separate reports for himself and for each of his subcontractors.

#### SUBLETTING OR ASSIGNING THE CONTRACT

The contractor shall perform with his organization contract work amounting to less than 50 percent of the original contract price, except that any items designated by the State as "Specialty Items" may be performed by subcontract. The amount of any such "Specialty Items" so performed may be deducted from the original total contract price before computing the amount of work required to be performed by the contractor with his own organization.

"His own organization" shall be construed to include only workmen employed and paid directly by the prime contractor, equipment owner or rented by him, with or without operators.

"Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, craftsmanship or equipment not ordinarily available in contracting organizations qualified to bid on the contract as a whole or in general are to be limited

to minor components of the overall contract.

2. In addition to the 50 percent requirement set forth in paragraph 1 above, the contractor shall furnish (a) a competent superintendent or foreman who is employed by him, who has full authority to direct performance of the work in accordance with the contract requirements, and who is in charge of all construction operations (regardless of who performs the work), and (b) such other of his own organizational capability and responsibility (supervision, management, and engineering services) as the State highway department contracting officer determines is necessary to assure the performance of the contract.

3. The contract amount upon which the 50 percent requirement set forth in paragraph 1 is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

4. Any Items that have been selected as "Specialty Items" for the contract are listed as such in the Special Provisions, bid schedule, or elsewhere in the contract documents.

5. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the State highway department contracting officer, or his authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Request for permission to sublet, assign, or otherwise dispose of any portion of the contract shall be in writing and accompanied by (a) a showing that the organization which will perform the work is particularly experienced and equipped for such work, and (b) an assurance by the contractor that the labor standards provisions set forth in this contract shall apply to labor performed on all work encompassed by the request.

#### VIII. SAFETY; ACCIDENT PREVENTION

In the performance of this contract, the contractor shall comply with all applicable Federal, State and local laws governing safety, health and sanitation. The contractor shall provide all safeguards, safety devices and protection equipment and take any other needed actions, on his own responsibility, or as the State highway department contracting officer may determine, reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this contract, that the contractor and any subcontractor shall not require any laborer or mechanic em-

played in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1926, formerly Part 1518, as revised from time to time), promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96).

#### IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, supplies, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project as a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project in one or more places where it is readily available to all personnel concerned with the project:

#### NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

Title 18, United States Code, Section 1020, reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

"Whoever knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

"Whoever knowingly makes any false statement or false representation as to any material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-Aid Road Act approved July 1, 1916 (39 Stat. 355), as amended and supplemented;

"Shall be fined not more than \$10,000 or imprisoned not more than five years or both."

#### X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (A CABLE TO CONTRACTS AND SUBCONTRACTS WHICH EXCEED \$100,000)

1. The contractor stipulates that any facility to be utilized in the performance of this contract, unless such contract is exempt therefrom under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-110, Executive Order 11738, and regulations implementing thereof (40 CFR, Part 136), is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA), List of Violating Facilities. Pursuant to 40 CFR 15.20.

2. The contractor agrees to comply with all the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. The contractor shall promptly refer to the State highway department of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for this contract is under consideration to be listed on the EPA List of Violating Facilities.

4. The contractor agrees to include cause to be included the requirements of subparagraphs 1 through 4 of this paragraph X in every nonexempt subcontract and further agrees to take such action as the Government may direct as a means of enforcing such requirements.

[40 FR 42867, Sept. 17, 1975]

#### APPENDIX B—FEDERAL-AID PROJECTS, NOTICES, NOTICES TO PROSPECTORS FEDERAL-AID CONSTRUCTION CONTRACTORS

#### 1. CERTIFICATION OF NONSEGREGATED FACILITIES.

a. A certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 FR 7439, May 19, 1967) on Elimination of Segregated Facilities (is included in the proposal and must be submitted prior to the award of a Federal-aid highway construction contract.

ceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause).

b. Bidders are cautioned as follows: By signing this bid, the bidder will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in this proposal. This certification provides that the bidder does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.

c. Bidders receiving Federal-aid highway construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

## 2. NOTICE TO PROSPECTIVE SUBCONTRACTORS AND MATERIAL SUPPLIERS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

a. A Certification of Nonsegregated Facilities as required by the May 9, 1967, Order of the Secretary of Labor (32 FR 7439, May 19, 1967) on Elimination of Segregated Facilities which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.

b. Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his employees facilities which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.

c. Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice

to prospective subcontractors for construction contracts and materials suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

## 3. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

By signing this bid, the bidder will be deemed to have stipulated as follows:

a. That any facility to be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR, Part 15), is not listed on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

b. That the State highway department shall be promptly notified prior to contract award of the receipt by the bidder of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

[40 FR 42871, Sept. 17, 1975]

## Subpart B—Federal-Aid Contracts (Appalachian Contracts)

AUTHORITY: 40 U.S.C. App. 201, 402; 23 U.S.C. 315; 49 CFR 1.48(b)(35).

SOURCE: 39 FR 35146, Sept. 30, 1974, unless otherwise noted.

### § 633.201 Purpose.

The purpose of the regulations in this subpart is to establish policies and outline procedures for administering projects and funds for the Appalachian Development Highway System and Appalachian local access roads.

### § 633.202 Definitions.

(a) The word "Commission" means the Appalachian Regional Commission (ARC) established by the Appalachian Regional Development Act of 1965, as amended (Act).

(b) The term "division administrator" means the chief Federal Highway Administration (FHWA) official assigned to conduct FHWA business in a particular State.

[39 FR 35156, Sept. 30, 1974, as amended at 40 FR 49084, Oct. 21, 1975; 41 FR 8769, Mar. 1, 1976]

**§ 633.203 Applicability of existing laws, regulations, and directives.**

The provisions of Title 23, United States Code, that are applicable to the construction and maintenance of Federal-aid primary and secondary highways, and which the Secretary of Transportation determines are not inconsistent with the Act, shall apply, respectively, to the development highway system and the local access roads. In addition, the Regulations for the Administration of Federal-aid for Highways (Title 23, Code of Federal Regulations) and directives implementing applicable provisions of Title 23, United States Code, where not inconsistent with the Act, shall be applicable to such projects.

**§ 633.204 Fiscal allocation and obligations.**

(a) Federal assistance to any project under the Act shall be as determined by the Commission, but in no event shall such Federal assistance exceed 70 per centum of the cost of such a project.

(b) The division administrator's authorization to proceed with the proposed work shall establish obligation of Federal funds with regard to a particular project.

[39 FR 35156, Sept. 30, 1974, as amended at 40 FR 49084, Oct. 21, 1975; 41 FR 8769, Mar. 1, 1976]

**§ 633.205 Prefinancing.**

(a) Under the provisions of subsection 201(h) of the Act, projects located on the Appalachian Development Highway System including preliminary engineering, right-of-way, and/or construction may be programed and advanced with interim State financing.

(b) Program approvals, plans, specifications, and estimates (PS&E) approval, authorizations to proceed, concurrence in award of contracts, and all other notifications to the State of advancement of a project shall include the statement, "There is no commitment or obligation on the part of the United States to provide funds for this highway improvement. However, this

project is eligible for Federal reimbursement when sufficient funds are available from the amounts allocated by the Appalachian Regional Commission."

**§ 633.206 Project agreements.**

(a) Project agreements executed for projects under the Appalachian program shall contain the following paragraphs:

(1) "For projects constructed under section 201 of the Appalachian Regional Development Act of 1965, as amended, the State highway department agrees to comply with all applicable provisions of said Act, regulations issued thereunder, and policies and procedures promulgated by the Appalachian Regional Commission and the Federal Highway Administration. Inasmuch as a primary object of the Appalachian Regional Development Act of 1965 is to provide employment, the State highway department further agrees that in addition to other applicable provisions of Title Code of Federal Regulations, Part § 21.5(c)(1), and paragraphs (2)(iii) and (2)(v) of Appendix C thereof, shall be applicable to all employment practices in connection with this project, and the State's employment practices with respect to those employees connected with the Appalachian Highway Program."

(2) "For projects constructed on section of an Appalachian development route not already on the Federal-aid Primary System, the State highway department agrees to add the section to the Federal-aid Primary System prior to, or upon completion of, construction accomplished with Appalachian funds."

(b) For prefinanced projects, the following additional provision shall be incorporated into the project agreement: "Project for Construction on the Appalachian Development Highway System in Advance of the Appropriation of Funds. This project, to be constructed pursuant to subsection 201(h) of the Appalachian Regional Development Act Amendments of 1967, will be constructed in accordance with all procedures and requirements and standards applicable to projects on the Ap-

Appalachian Development Highway System financed with the aid of Appalachian funds. No obligation of Appalachian funds is created by this agreement, its purpose and intent being to provide that, upon application by the State highway department, and approval thereof by the Federal Highway Administration, any Appalachian development highway funds made available to the State by the Appalachian Regional Commission subsequent to the date of this agreement may be used to reimburse the State for the Federal share of the cost of work done on the project."

**§ 633.207 Construction labor and materials.**

(a) Construction and materials shall be in accordance with the State highway department standard construction specifications approved for use on Federal-aid primary projects and special provisions and supplemental specifications amendatory thereto approved for use on the specific projects.

(b) The provisions of 23 U.S.C. 324 and of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d-2000d-4) and the implementing regulations in 49 CFR Part 21, including the provisions of § 21.5(c)(1), and paragraphs (2)(iii) and (2)(v) of Appendix B thereof relative to employment practices, shall be applicable to all types of contracts listed in Appendix B.

(c) The "Required Contract Provisions, Appalachian Development Highway System and Local Access Roads Construction Contracts," Form PR-1316 (Appendix B), shall be included in all construction contracts awarded under the Act.

(d) The required contract provisions set forth in Form PR-1317 (Appendix B) shall be included in all types of contracts described in Appendix A, other than construction contracts.

(e) In the design and construction of highways and roads under the Act, the State may give special preference to the use of mineral resource materials native to the Appalachian region. The provisions of § 635.409 of this chapter shall not apply to projects under the Act to the extent such provisions are

inconsistent with sections 201(d) and (e) of the Act.

[39 FR 35146, Sept. 30, 1974, as amended at 40 FR 49084, Oct. 21, 1975; 41 FR 36204, Aug. 27, 1976]

**§ 633.208 Maintenance.**

Maintenance of all highway projects constructed under the Act, whether on the development system or local access roads, shall be the responsibility of the State. The State may arrange for maintenance of such roads or portions thereof, by agreement with a local governmental unit.

**§ 633.209 Notices to prospective Federal-aid construction contractors.**

The State highway department shall include the notices set forth in Appendix D in all future bidding proposals for Appalachian Development System and Appalachian local access roads construction contracts.

**§ 633.210 Termination of contract.**

All contracts exceeding \$2,500 shall contain suitable provisions for termination by the State, including the manner in which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

**§ 633.211 Implementation of the Clean Air Act and the Federal Water Pollution Control Act.**

Pursuant to regulations of the Environmental Protection Agency (40 CFR Part 15) implementing requirements with respect to the Clean Air Act and the Federal Water Pollution Control Act are included in Appendix B to this part.

[40 FR 49084, Oct. 21, 1975]

**APPENDIX A—TYPES OF CONTRACTS TO WHICH THE CIVIL RIGHTS ACT OF 1964 IS APPLICABLE**

Section 324 of Title 23, U.S.C., the Civil Rights Act of 1964, and the implementing regulations of the Department of Transpor-

tation (49 CFR Part 21), including the provisions of subparagraphs (2)(iii) and (2)(v) of Appendix C thereof relative to employment practices, are applicable to the following types of contracts awarded by State highway departments, contractors, and first tier subcontractors, including those who supply materials and lease equipment:

1. Construction.
2. Planning.
3. Research.
4. Highway Safety.
5. Engineering.
6. Property Management.
7. Fee contracts and other commitments with persons for services incidental to the acquisition of right-of-way including, but not limited to:
  - a. Advertising contracts.
  - b. Agreements for economic studies.
  - c. Contracts for surveys and plats.
  - d. Contracts for abstracts of title certificates and title insurance.
  - e. Contracts for appraisal services and expert witness fees.
  - f. Contracts to negotiate for the acquisition of right-of-way.
  - g. Contracts for disposal of improvements and property management services.
  - h. Contracts for employment of fee attorneys for right-of-way procurement, or preparation and trial of condemnation cases.
  - i. Contracts for escrow and closing services.

[40 FR 49084, Oct. 21, 1975]

#### **APPENDIX B—REQUIRED CONTRACT PROVISIONS, APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROADS CONSTRUCTION CONTRACTS**

- I. Application.
- II. Employment Preference.
- III. Equal Opportunity: Employment Practices.
- IV. Equal Opportunity: Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment.
- V. Nonesegregated Facilities.
- VI. Payment of Predetermined Minimum Wages.
- VII. Statements and Payrolls.
- VIII. Record of Materials, Supplies and Labor.
- IX. Subletting or Assigning the Contract.
- X. Safety: Accident Prevention.
- XI. False Statements Concerning Highway Projects.
- XII. Implementation of Clean Air Act and Federal Water Pollution Control Act.

**I. Application.** 1. These contract provisions shall apply to all work performed on the contract by the contractor with his own organization and with the assistance of workmen under his immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided in sections II, III, and IV hereof, the contractor shall insert in each of his subcontracts all of the stipulations contained in these Required Contract Provisions and also a clause requiring his subcontractors to include these Required Contract Provisions in any lower tier subcontracts which they may enter into together with a clause requiring the inclusion of these provisions in any further subcontracts that may in turn be made. The Required Contract Provisions shall in no instance be incorporated by reference.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be grounds for termination of contract.

4. A breach of the following clauses may also be grounds for debarment as provided in 29 CFR 5.6(b):

Section 1, paragraph 2.

Section VI, paragraphs 1, 2, 3, 5 and 8a.

Section VII, paragraphs 1, 5a, 5b and 5c.

**II. Employment preference.** 1. During performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the United States Department of Labor wherein the contract work is situated, the subregion, or the Appalachian county of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of laborers, mechanics and other employees he anticipates will be required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work the information submitted by the contractor

in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill the positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. The contractor shall include the provisions of Section II-1 through II-4 in every subcontract for work which is, or reasonably may be, done as on-site work.

III. *Equal opportunity: employment practices.* During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment and recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a copy of this notice to be provided by the State highway department advising the said labor union or workers' representative of the contractor's commitments under this section III and

shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of this Section III in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State Highway Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, That in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

IV. *Equal opportunity selection of subcontractors, procurement of materials, and leasing of equipment.* During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. *Compliance with regulations.* The contractor shall comply with the provisions of



23 U.S.C. 324 and with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. *Nondiscrimination.* The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipments. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices.

3. *Solicitations for subcontracts including procurement of materials and equipment.* In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier, shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

4. *Information and reports.* The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. *Sanctions for noncompliance.* In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination or suspension of the contract, in whole or in part.

6. *Incorporation of provisions.* The contractor will include the provisions of paragraphs (1) through (6) in every subcontract,

including procurements of materials or leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement, as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That, in the event a contractor becomes involved in, or threatened with, litigation with a subcontractor or supplier, as a result of such direction, the contractor may request the State to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

V. *Nonsegregated facilities.* (Applicable to Federal-aid construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.)

By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, or material supplier, as appropriate, certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments and that he will not permit his employees to perform their services at any location under his control, where segregated facilities are maintained. He agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting room, work areas, restrooms and washrooms, restaurants and other eating areas, timeclosets, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided to employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin because of habit, local custom, or otherwise. He agrees that (except where he has obtained identical certifications from proposed subcontractors and material suppliers for specific time periods), he will obtain identical certifications from proposed subcontractors or material suppliers prior to the award of subcontracts or the consummation of material supply agreements, exceeding \$10,000 which are not exempt from the provisions

of the Equal Opportunity clause, and that he will retain such certification in his files.

**VI. Payment of predetermined minimum wages—1. General.** All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less than once a week, and without subsequent deduction or rebate on any account, except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics subject to the provisions of Section VI, paragraph 3b, hereof. Also for the purpose of this clause, regular contributions made or incurred for more than a weekly period under plans, funds, or programs, but during the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

**Classifications—**a. The State highway department contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a copy of the action taken shall be sent by the State highway department contracting officer to the Secretary of Labor.

In the event the interested parties do not agree on the proper classification or classification of a particular class of laborers and mechanics to be used, the question shall be referred to the Secretary for determination.

**Payment of fringe benefits—**a. The State highway department contracting officer shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefits, the question shall be referred to the Secretary for determination.

of the contracting officer, shall be referred to the Secretary of Labor for determination.

b. If the contractor does not make payments to a trustee or other third person, he may consider as part of the wage of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is part of this contract: *Provided, however,* The Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. **Payment of excess wages.** While the wage rates shown are the minimum rates required by the contract to be paid during its life, this is not a representation that labor can be obtained at these rates. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed herein.

5. **Apprentices and trainees (Programs of Department of Labor).** a. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in 29 CFR 5.2(c)(2) or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the State highway department or to a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction project to using any appren-

tices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

b. Trainees, except as provided in 29 CFR 5.15, will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the State highway department or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. The utilization of apprentices, trainees and journeymen shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

6. *Apprentices and trainees (Programs of Department of Transportation).* Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal opportunity in connection with Federal-aid highway construction programs are not subject to the requirements of section VI, paragraph 5 above. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs.

7. *Withholding for unpaid wages.* The State highway department contracting officer may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers, mechanics, (including apprentices and trainees) watchmen, or guards employed by the contractor or any subcontractor on the work the full

amount of wages required by the contract. In the event of failure to pay any laborer, mechanic, (including apprentices and trainees) watchman or guard employed or working on the site of the work, all or part of wages required by the contract, the State highway department contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

8. *Overtime requirements.* a. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen or guards (including apprentices and trainees described in paragraphs 5 and 6 above) shall require or permit any laborer, mechanic, watchman or guard in any workweek in which he is employed on work, to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer, mechanic, watchman or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.

b. In the event of any violation of paragraph 8a, the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman or guard employed in violation of paragraph 8a, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph 8a.

c. The State highway department contracting officer may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages provided in paragraph 8b.

VII. *Statements and payrolls—1. Compliance with Copeland Regulations* (29 CFR Part 3). The contractor shall comply with the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor which are hereby incorporated by reference.

2. *Weekly statement.* Each contractor or subcontractor shall furnish each week a statement to the State highway department resident engineer with respect to the wages

and each of its employees, including apprentices and trainees described in section 1, paragraphs 5 and 6, and watchmen and guards on work covered by the Copeland regulations during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. Contractors and subcontractors must use the certification set forth on U.S. Department of Labor Form WH-48, or the same certification appearing on the reverse of Optional U.S. Department of Labor Form WH-347, or on any form of identical wording.

**Final labor summary.** The contractor and each subcontractor shall furnish, upon completion of the contract, a summary of employment, indicating for the completed project the total hours worked and total amount earned. This data shall be submitted to the State highway department resident engineer on Form PR-47 together with the data required in section VIII, but relative to materials and supplies.

**Final certificate.** Upon completion of the contract, the contractor shall submit to the State highway department contracting officer, for transmission to the Federal Highway Administration with the voucher for final payment for any work performed under the contract, a certificate concerning the names and classifications for laborers, mechanics, watchmen and guards employed on the project, in the following form:

.....  
 \_\_\_\_\_  
 undersigned, contractor on

(Project No.)

\_\_\_\_\_ hereby certifies that all laborers, mechanics, apprentices, trainees, watchmen and guards employed by him or by any subcontractor performing work under the contract on the project have been paid wages at rates not less than those required by the contract provisions, and that the work performed by such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the contract or training program provisions applicable to the wage rate paid.

Signature and title \_\_\_\_\_

.....  
**Payrolls and payroll records—**a. Payroll and basic records relating thereto will be maintained during the course of the contract and preserved for a period of three years thereafter for all laborers, mechanics, apprentices, trainees, watchmen and guards working at the site of the work.

b. The payroll records shall contain the name, social security number and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor, pursuant to Section VI, paragraph 3.b., has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

c. The payrolls shall contain the following information:

1. The employee's full name, address and social security number and a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Section II, paragraph 1.a. (The employee's full name and social security number need only appear on the first payroll on which his name appears. The employee's address need only be shown on the first submitted payroll on which the employee's name appears, unless a change of address necessitates a submittal to reflect the new address.)

2. The employee's classification.

3. Entries indicating the employee's basic hourly wage rate and, where applicable, the overtime hourly wage rate. The payroll should indicate separately the amounts of employee and employer contributions to fringe benefits funds and/or programs. Any fringe benefits paid to the employee in cash must be indicated. There is no prescribed or mandatory form for showing the above information on payrolls.

4. The employee's daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted).

5. The itemized deductions made and

6. The net wages paid.

d. The contractor will submit weekly a copy of all payrolls to the State highway department resident engineer. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and the classifications set forth for each laborer or mechanic conform with the

work he performed. Submission of a weekly statement which is required under this contract by Section VII, paragraph 2, and the Copeland Regulations of the Secretary of Labor (29 CFR Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor pursuant to Section VI, paragraph 3b, shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the State highway department, the Federal Highway Administration and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

e. The wages of labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the contractor shall make all necessary arrangements for them to be cashed and shall give information regarding such arrangements.

f. No fee of any kind shall be asked or accepted by the contractor or any of his agents from any person as a condition of employment on the project.

g. No laborers shall be charged for any tools used in performing their respective duties except for reasonably avoidable loss or damage thereto.

h. Every employee on the work covered by this contract shall be permitted to lodge, board and trade where and with whom he elects and neither the contractor nor his agents, nor his employees shall, directly or indirectly, require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.

i. No charge shall be made for any transportation furnished by the contractor, or his agents, to any person employed on the work.

j. No individual shall be employed as a laborer or mechanic on this contract except on a wage basis, but this shall not be construed to prohibit the rental of teams, trucks, or other equipment from individuals.

VIII. *Record of materials, supplies and labor.* 1. The contractor shall maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form PR-47 and in the units shown. Upon completion of the contract, this record, together with the final labor summary re-

quired in Section VII, paragraph 3, he shall be transmitted to the State highway department resident engineer for the record on Form PR-47 in accordance with the instructions attached thereto, which will be furnished for this purpose upon request. The quantities for the listed items shall be reported separately for roadway and structures over 20 feet long as measured along the centerline of the roadway.

2. The contractor shall become familiar with the list of specific materials and supplies contained in Form PR-47 prior to the commencement of work under this contract. Any additional materials information required will be solicited through revision of Form PR-47 with attendant explanation.

3. Where subcontracts are involved, the contractor shall submit either a report covering work both by himself and all his subcontractors, or he may submit separate reports for himself and for each of his subcontractors.

IX. *Subletting or assigning the contract.* The contractor shall perform with his own organization contract work amounting to not less than 50 percent of the original contract price, except that any items designated by the State as "Specialty Items" may be performed by subcontract and the amount of any such "Specialty Items" performed may be deducted from the original total contract price before computing the amount of work required to be performed by the contractor with his own organization.

a. "His own organization" shall be construed to include only workmen employed and paid directly by the prime contractor and equipment owned or rented by the contractor with or without operators.

b. "Specialty items" shall be construed to be limited to work that requires highly specialized knowledge, craftsmanship or equipment not ordinarily available in contracting organizations qualified to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. In addition to the 50 percent requirement set forth in paragraph 1 above, the contractor shall furnish (a) a competent superintendent or foreman who is employed by him, who has full authority to direct the performance of the work in accordance with the contract requirements, and who is in charge of all construction operations regardless of who performs the work), and (b) such other of his own organizational resources as ability and responsibility (supervision, management, and engineering services) as the State highway department contracting officer determines is necessary to assure the performance of the contract.

3. The contract amount upon which the 50 percent requirement set forth in paragraph 1

graph 1 is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

4. Any items that have been selected as "Specialty Items" for the contract are listed in the Special Provisions, bid schedule, or elsewhere in the contract documents.

5. No portion of the contract shall be let, assigned or otherwise disposed of except with the written consent of the State highway department contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Request for permission to sublet, assign or otherwise dispose of any portion of the contract shall be in writing and accompanied by (a) a showing that the organization which will perform the work is particularly experienced and equipped for such work, and (b) assurance by the contractor that the standards provisions set forth in this contract shall apply to labor performed on work encompassed by the request.

**Safety:** Accident prevention. In the performance of this contract, the contractor shall comply with all applicable Federal, State and local laws governing safety, health and sanitation. The contractor shall provide all safeguards, safety devices and protective equipment and take any other protective actions, on his own responsibility, or as the State highway department contracting officer may determine, reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

It is a condition of this contract, and shall be a condition of each subcontract entered into pursuant to this contract, that the contractor and any subcontractor shall require any laborer or mechanic employed in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1926, formerly Part 1518, as revised from time to time), promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (33 U.S.C. 190).

**I. False statements concerning highway projects.** In order to assure high quality and reliable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their

functions as carefully, thoroughly and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project in one or more places where it is readily available to all personnel concerned with the project:

\* \* \* \* \*

**NOTICE TO ALL PERSONNEL ENGAGED ON  
FEDERAL-AID HIGHWAY PROJECTS**

Title 18, United States Code, section 1020, reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any highway or related project submitted for approval to the Secretary of Transportation; or

"Whoever knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

"Whoever knowingly makes any false statement or false representation as to a material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-Aid Road Act approved July 1, 1916 (39 Stat. 355), as amended and supplemented;

"Shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

**XII. Implementation of Clean Air Act and Federal Water Pollution Control Act (applicable to contracts and subcontracts which exceed \$100,000).**—1. The contractor stipulates that any facility to be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof

(40 CFR Part 15), is listed not on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities Pursuant to 40 CFR 15.20.

2. The contractor agrees to comply with all the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. The contractor shall promptly notify the State highway department of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. The contractor agrees to include or cause to be included the requirements of subparagraphs 1 through 4 of this paragraph XII in every subcontract which exceeds \$100,000, and further agrees to take such action as Government may direct as a means of enforcing such requirements.

[40 FR 49084, Oct. 21, 1975]

#### APPENDIX C—ADDITIONAL REQUIRED CONTRACT PROVISIONS, APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROADS CONTRACTS OTHER THAN CONSTRUCTION CONTRACTS

##### *Equal Opportunity: Employment Practices and Selection of Subcontractors, Suppliers of Materials, and Lessors of Equipment*

During the performance of this contract, the contractor agrees as follows:

1. *Compliance with regulations.* The contractor will comply with the provisions of 23 U.S.C. 324 and with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the regulations), which are herein incorporated by reference and made a part of this contract.

2. *Employment practices*—a. The contractor will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, or national origin. Such action shall include, but not be limited to the following: recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities and treatment of employees. The contractor agrees to post in

conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this employment practices clause.

b. The contractor will, in all solicitations or advertisements for employees placed on behalf of the contractor, state that qualified applicants will receive consideration for employment without regard to race, color, sex, or national origin.

c. The contractor will send to each union or representative of workers which he has a collective bargaining agreement or other contract or understanding notice advising the said labor union or representative of the contractor's commitments under the employment provisions, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

3. *Selection of subcontractors, procurement of materials and leasing of equipment*—a. The contractor, with regard to work performed by him after award prior to completion of the contract, will not discriminate on the ground of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21 of the Regulations.

b. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a contract, including procurements of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the contractor of the contractor's obligations under this contract and Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.

4. *Information and reports.* The contractor will provide all information and reports required by the Regulations, or orders or instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. *Incorporation of provisions.* The contractor will include these additional required contract provisions in every subcontract

tract, including procurements of materials and leases of equipment, unless exempt by the Regulations or orders, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract, procurement, or lease as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: *Provided, however*, That, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor, supplier, or lessor as a result of such directed action, the contractor may request the State to enter into such litigation to protect the interest of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

**g. Sanctions for noncompliance.** In the event of the contractor's noncompliance with sections 1 through 5 above, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to.

**h. Withholding of payments to the contractor under the contract until the contractor complies, and/or**

**i. Cancellation, termination or suspension of the contract in whole or in part.**

FR 49088, Oct. 21, 1975]

## APPENDIX D—FEDERAL-AID PROPOSAL NOTICES

### NOTICES TO PROSPECTIVE FEDERAL-AID CONSTRUCTION CONTRACTORS

#### I. Certification of nonsegregated facilities.

(a) A Certification of Nonsegregated Facilities as required by the May 9, 1967, Order of the Secretary of Labor (32 FR 7439, May 19, 1967) on Elimination of Segregated Facilities (is included in the proposal and must be submitted prior to the award of a Federal-aid highway construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause).

(b) Bidders are cautioned as follows: By signing this bid, the bidder will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in this proposal. This certification provides that the bidder does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.

(c) Bidders receiving Federal-aid highway construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

#### NOTICE TO PROSPECTIVE SUBCONTRACTORS AND MATERIAL SUPPLIERS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

(a) A Certification of Nonsegregated Facilities is required by the May 9, 1967, Order of the Secretary of Labor (32 FR 7431, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.

(b) Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his employees facilities which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.

(c) Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

**II. Implementation of Clean Air Act.** (a) By signing this bid, the bidder will be deemed to have stipulated as follows:

(1) That any facility to be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as by Pub. L. 91-604), Executive order 11738, and regulations in implementation thereof (40



CFR, Part 15, is not listed on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

(2) That the State highway department shall be promptly notified prior to contract award of the receipt by the bidder of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

### Subpart C—Direct Federal Construction Contracts

**AUTHORITY:** 23 U.S.C. 315; 49 CFR 1.48(b)(35).

**SOURCE:** 39 FR 22418, June 24, 1974, unless otherwise noted.

#### § 633.301 Purpose.

To prescribe for direct Federal highway construction contracts, provisions covering employment, safety, specific equal employment opportunity responsibilities and false statements concerning highway projects.

#### § 633.302 Applicability.

(a) The form "Continuation of Standard Form 19-A, Labor Standards Provisions" (Appendix A) shall be made a part of all highway construction contracts under the direct supervision of the Federal Highway Administration. The form shall be incorporated in each highway construction contract as a continuation of Standard Form 19-A, Labor Standards Provisions and the clauses set forth in paragraph 7 of Appendix A shall be included in all subcontracts.

(b) Such additional labor standards provisions as hometown or imposed equal employment opportunity plans shall be added at the end of the form.

### APPENDIX A—CONTINUATION OF STANDARD FORM 19-A LABOR STANDARDS PROVISIONS (DOT-FHWA 3-74)

#### 1. Weekly Statement

The contractor and each subcontractor shall furnish each week a statement with respect to the wages paid each of his employees engaged on work covered by the Copeland Act Regulations, 29 CFR, Part 3, and

by 29 CFR, Part 5, during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. The statement shall be on U.S. Department of Labor Form WH 348, "Statement of Compliance," or on an identical form on the basis of U.S. Department of Labor Form WH 348, "Payroll (For Contractor's Optional Use) or on any form with identical wording. Copies of these forms may be purchased from the Government Printing Office.

#### 2. Employment Practices

a. The wages of labor shall be paid in full to the tender of the United States, except that the condition will be considered satisfied if payment is made by a negotiable check, drawn on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the contractor and subcontractor shall make all necessary arrangements for them to be cashed and shall give information to their employees regarding such arrangements.

b. No fee of any kind shall be asked or accepted by the contractor, or any of its agents or subcontractors, from any person as a condition of employment on the project.

c. No laborers or mechanics shall be charged for any tools used in performing their duties unless prior permission to make payroll deductions for such charges has been granted by the Secretary of Labor in accordance with Section 3.6 of the Copeland Act Regulations.

d. Every employee on the work covered by this contract shall be permitted to lodge, board, and trade where and with whom he elects and neither the contractor, his subcontractors, nor his employees shall directly or indirectly require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.

e. No charge shall be made for any transportation furnished by the contractor, his subcontractors to any person employed on the work.

f. No individual shall be employed as a laborer or mechanic on this contract except on a wage basis, but this shall not be construed to prohibit the rental of team trucks, or other equipment from individuals.

g. Each employee's social security number must be shown on the first payroll on which his name appears.

#### 3. Payment of Excess Wages

While the wage rates shown in the wage determination decision are the minimum

... rates required by the contract to be paid during its life, it is the responsibility of bidders to inform themselves as to the local labor conditions, such as the length of workweek and workweek, overtime compensation, health and welfare contributions, labor supply, and prospective changes or adjustments of wage rates. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed herein.

#### Safety

It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this contract, that the contractor and any subcontractor shall require any individual employed in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, 1926, as revised from time to time) promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Federal Work Hours and Safety Standards Act.

#### Statements Concerning Highway Projects

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, architects, and workers on Federal highway projects, it is essential that all persons connected with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any matter related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and other acts, the contractor shall post the Department of Transportation Form FHWA-1022 on each Federal highway project in one or more places where it is readily available to all personnel connected with the project.

#### Specific Equal Employment Opportunity Responsibilities

##### General

Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in SF 23-A, General Provisions in these Provisions. The requirements set forth in these Provisions shall constitute specific affirmative action requirements for project activities under this contract and shall implement the equal employment opportunity

requirements set forth in the General Provisions.

(2) The contractor will work with the Federal Government in carrying out equal employment opportunity obligations and in their review of his activities under the contract.

(3) The prime contractor, and all subcontractors (not including material suppliers), holding subcontracts of \$10,000 or more, will comply with the minimum equal employment opportunity requirements set forth in the balance of this clause 6.

#### b. Equal Employment Opportunity Policy

The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

#### c. Equal Employment Opportunity Officer

The contractor will designate and make known to the contracting officer an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

#### d. Dissemination of Policy

(1) All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities. To insure that the above agreement will be met, the following actions will be taken as a minimum:

(a) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation

tation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(b) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

(c) The EEO Officer or appropriate company official will instruct all employees engaged in the direct recruitment of employees for the project relative to the methods followed by the contractor in locating and hiring minority group employees.

(2) In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officer, etc., the contractor will take the following actions:

(a) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(b) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

#### *e. Recruitment*

(1) When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." He will insert all such advertisements in newspapers, or other publications, having a large circulation among minority groups in the area from which the project work force would normally be derived.

(2) The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

(3) The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas acces-

sible to all such employees. In addition information and procedures with regard to referring minority group applicants will be discussed with employees.

#### *f. Personnel Actions*

(1) Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed:

(a) The contractor will conduct periodic inspections of project sites to insure working conditions and employee facts do not indicate discriminatory treatment of project site personnel.

(b) The contractor will periodically evaluate the spread of wages paid within classification to determine any evidence of discriminatory wage practices.

(c) The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the action reviewed, such corrective action shall include all affected persons.

(d) The contractor will investigate all complaints of alleged discrimination made by the contractor in connection with his operations under this contract, will attempt to solve such complaints, and will take appropriate corrective action. If the investigation indicates that the discrimination may involve persons other than the complainant, corrective action shall include such persons. Upon completion of each investigation the contractor will inform every complainant of all of his avenues of appeal.

#### *g. Training and Promotion*

(1) The contractor will assist in local qualifying and increasing the skills of minority group employees and applicants for employment.

(2) Consistent with his manpower requirements and as permissible under Federal and State regulations, the contractor will make full use of training programs, i.e., preapprenticeship apprenticeship, and/or on-the-job training programs for the geographical area of contract performance.

(3) The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

(4) The contractor will periodically review the training and promotion potential of minority group employees and will encourage eligible employees to apply for such training and promotion.

**h. Unions.**

If the contractor relies in whole or in part on unions as a source of his work force, he will use his best efforts to obtain the cooperation of such unions to increase minority group opportunities within the unions, and to effect referrals by such unions of minority group employees. Actions by the contractor, either directly or through a contractor's association acting as his agent, will include the procedures set forth below:

(1) Use his best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members for membership in the unions and increasing the skills of minority group employees so that they may qualify for higher paying employment.

(2) Use his best efforts to incorporate an employment opportunity clause into union agreements to the end that such clauses will be contractually bound to refer applicants without regard to their race, sex, religion, sex, or national origin.

(3) In the event a union is unable to refer applicants as requested by the contractor within the time limit set forth in the union agreement, the contractor will, through his recruitment procedures, fill the employment vacancies without regard to race, sex, religion, sex, or national origin, making full efforts to obtain qualified minority group persons.

**Subcontracting**

The contractor will use his best efforts to ensure minority group subcontractors or contractors with meaningful minority group representation among their employees.

The contractor will use his best efforts to ensure subcontractor compliance with Federal equal employment opportunity obligations.

**Records and Reports**

The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

(1) The number of minority and nonminority group members employed in each work classification on the project.

(2) The progress and efforts being made in cooperation with unions to increase minority group employment opportunities (applicable only to contractors who rely in whole or in part on unions, as a source of their work force).

(3) The progress and efforts being made in hiring, training, qualifying, and promoting minority group employees.

(4) The progress and efforts being made in securing the services of minority group contractors or subcontractors with

meaningful minority group representation among their employees.

(2) All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by the contracting officer or his authorized representative.

(3) The contractor will submit to the Federal Highway Administration a monthly report for the first three months after construction begins, and thereafter upon request, for the duration of the project, indicating the number of minority and nonminority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR-1391.

**7. Subcontracts**

The contractor shall include, verbatim, clauses 1, 2, 4, 5 and 6 of this continuation sheet in each of his subcontracts, except that Clause 6 will not be required for subcontracts less than \$10,000. In addition, the contractor shall include a clause requiring each subcontractor to include these clauses in any lower tier subcontracts.

**PART 635—CONSTRUCTION AND MAINTENANCE****Subpart A—Contract Procedures****Sec.**

- 635.101 Purpose.
- 635.102 Definitions.
- 635.103 Applicability.
- 635.104 Method of construction.
- 635.105 Supervising agency.
- 635.106 Small business participation.
- 635.107 Advertising for bids.
- 635.108 Licensing and qualification of contractors.
- 635.109 Bid opening and bid tabulations.
- 635.110 Tied bids.
- 635.111 Award of contract and concurrence in award.
- 635.112 Agreement estimate.
- 635.113 Subcontracting.
- 635.114 Participation in progress payments.
- 635.119 Use of publicly owned equipment.
- 635.120 Claims and claim awards.
- 635.121 Changes and extra work.
- 635.122 Contract time and contract time extensions.
- 635.123 Submission of contract and force account documents.
- 635.124 Labor and employment.
- 635.125 Health and safety.
- 635.126 Termination and default of contract.
- 635.127 False statements.

Sec.

- 635.128 Determination and documentation of pay quantities.

**Subpart B—Force Account Construction**

- 635.201 Purpose.  
635.202 Application.  
635.203 Definitions.  
635.204 Determination of more cost effective method.  
635.205 Finding of cost effectiveness.

**Subpart C—Physical Construction Authorization**

- 635.301 Purpose.  
635.303 Applicability.  
635.305 Physical construction.  
635.307 Coordination.  
635.309 Authorization.

**Subpart D—General Material Requirements**

- 635.401 Purpose.  
635.403 Definitions.  
635.405 Applicability.  
635.407 Use of materials made available by a public agency.  
635.409 Restrictions upon materials.  
635.410 Buy America requirements.  
635.411 Material or product selection.  
635.413 Guaranty and warranty clauses.

**APPENDIX A—SUMMARY OF ACCEPTABLE CRITERIA FOR SPECIFYING TYPES OF CULVERT PIPES**

**Subpart E—Interstate Maintenance Guidelines**

- 635.501 Purpose.  
635.503 Policy.  
635.505 Maintenance guidelines.  
635.507 Implementation.  
635.509 Deficient or unsatisfactory maintenance.

**AUTHORITY:** 23 U.S.C. 112, 113, 114, 117, 128 and 315; 42 U.S.C. 3334, 4231-4233, 4601 et seq.; 49 CFR 1.48(b), unless otherwise noted.

**Subpart A—Contract Procedures**

**SOURCE:** 39 FR 35152, Sept. 30, 1974, unless otherwise noted.

**§ 635.101 Purpose.**

The purpose of this subpart is to prescribe policies, requirements, and procedures relating to Federal-aid highway projects, from the time of authorization to proceed to the construction stage, to the time of final acceptance by the Federal Highway Administration (FHWA).

**§ 635.102 Definitions.**

As used in this subpart:

(a) "Administrator" means Federal Highway Administrator.

(b) "Division Administrator" means the chief FHWA official assigned to conduct business in a particular State. A State is as defined in 23 U.S.C. 101.

(c) "State highway agency" means that department, commission, board, or official of any State charged by law with the responsibility for highway construction. The term "State highway agency" should be considered equivalent to "State highway agency" if the context so implies.

(d) "Certification of Acceptance" means the alternative procedure which may be used for administering certain highway projects involving Federal funds pursuant to 23 U.S.C. 117.

(e) "Minority Contractor" means a minority business enterprise that is owned or controlled by one or more minority persons who are socially or economically disadvantaged persons. Such disadvantage may result from cultural, racial, chronic economic circumstances or background or from a similar cause. Such persons include but are not limited to Negroes, Puerto Ricans, Spanish speaking Americans, American Indians, Eskimos, Orientals, and Aleuts.

**§ 635.103 Applicability.**

The policies, requirements, and procedures, prescribed in this subpart, subject to certain modifications as provided in § 635.105(e), apply to all Federal-aid highway projects except those constructed under a Certification of Acceptance Plan to which §§ 635.107(e), 635.108(c) and 635.110 shall apply.

[39 FR 35152, Sept. 30, 1974, as amended; 40 FR 14906, Apr. 3, 1975]

**§ 635.104 Method of construction.**

(a) Except as provided in paragraph (b) of this section, or unless the State highway agency demonstrates to the satisfaction of the Division Administrator that some other method is more cost effective, actual construction work shall be performed by contract awarded to the lowest responsible bidder. The State highway agency

all assure opportunity for free, open and competitive bidding, including adequate publicity of the advertisements or calls for bids. The advertising calling for bids and the award of contracts shall comply with the procedures and requirements set forth in § 635.107.

(b) When the Division Administrator determines that it is cost effective, construction work may be performed by some method other than by contract awarded by competitive bidding pursuant to requirements and procedures prescribed by him or her. Before such finding is made, the State highway agency shall determine that the organization to undertake the work is so organized and equipped as to perform the work satisfactorily and economically. Approval by the Division Administrator for construction by a method other than competitive bidding shall be requested by the State in accordance with Subpart B of Part 635 of this chapter.

35152, Sept. 30, 1974, as amended at 3514906, Apr. 3, 1975; 42 FR 30835, June 17, 1977; 48 FR 22912, May 23, 1983]

#### 105 Supervising agency.

The State highway agency has responsibility for the construction of Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by another under the supervision of a county, or other local public agency. The State highway agency will be responsible for insuring that such projects receive the same degree of supervision and inspection as a project constructed under a contract let and directly supervised by that agency and that the project is completed in conformity with approved plans and specifications.

(b) When a project is not located on the highway system over which the State highway agency has legal jurisdiction, or when other special conditions warrant, the State highway agency may arrange for a local public agency having jurisdiction over such streets or highways to perform the work with its own forces, or to let a contract therefor, provided the division administrator approves such proposed arrangements in advance and

provided all the following conditions are met:

(1) There is an agreement between the State highway agency and the local public agency setting forth the conditions under which the project will be constructed. The agreement shall provide that construction work performed by or under the supervision of a local public agency will be subject to inspection at all times by the State highway agency and the FHWA.

(2) The State highway agency certifies that the work performed by the local public agency is cost effective.

(3) The local public agency is paying part of the cost of the work or has other special interest therein.

(4) The local public agency is adequately staffed and suitably equipped to undertake and satisfactorily complete the work.

(5) In the case of force account work, there is full compliance with Subpart B of this part.

(c) When the work is to be performed under a contract awarded by a local public agency, all Federal requirements including those prescribed in this subpart shall be met.

(d) Although the State highway agency may employ a consultant to provide construction engineering services, such as inspection or survey work on a project, the State highway agency shall provide a full-time State-employed engineer to be in responsible charge and direct control of the project at all times. In those instances where a city or county can justify the use of consultants for these services, the city or county shall have a similar duty. The State highway agency and any such city or county shall not be relieved of its responsibilities under Federal law and the regulations in the event it utilizes the services of an engineering organization.

(e) When construction operations are performed on Federal-aid highway projects by any Federal agency by Federal contract and under such agency's procedures and operations on behalf of a State highway agency or other public agency, such construction operations shall be performed under the direct supervision of the State highway agency except that such supervision may be exercised through

the contracting Federal agency where it is so provided by agreement between the State highway agency and the Federal agency. The right of inspection of the work under these contracts shall be extended to all agencies involved in the project.

[39 FR 35152, Sept. 30, 1974, as amended at 48 FR 22912, May 23, 1983]

**§ 635.106 Small business participation.**

The State highway agency shall schedule contract lettings in a balanced program providing contracts of such size and character as to assure an opportunity for all sizes of contracting organizations to compete. In accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 11625, the State highway agency shall affirmatively encourage minority business participation in the highway construction program.

**§ 635.107 Advertising for bids.**

(a) No work shall be undertaken on any Federal-aid project, nor shall any project be advertised for bids, prior to authorization thereof by the division administrator.

(b) An invitation for bids shall not be issued by the State highway agency until the provisions of the applicable FHWA regulations and directives covering the administration of the Highway Relocation Assistance Program have been met, and there exists an understanding that satisfactory traffic control devices will be installed prior to acceptance of the project. The advertising shall be done in accordance with the laws, specifications, regulations, and policies of the State in which the project is located and the applicable Federal requirements set forth in this subpart and those implementing Title VI of the Civil Rights Act of 1964, under conditions that will assure free and adequate competition.

(c) The advertisement must be available to bidders a minimum of 3 weeks prior to opening of bids except that shorter periods may be approved by the division administrator in special cases when justified.

(d) The State highway agency shall obtain the approval of the division administrator prior to issuing any addendums to the approved plans and speci-

fications during the advertising period. The State highway agency shall provide such assurance as may be required by the division administrator that all bidders have received any addendums.

(e) Bidding procedures on a non-discriminatory basis shall be afforded all qualified bidders regardless of State boundaries and without regard to race, color, sex, or national origin. If any provisions of State laws, specifications, regulations, or policies operate in any manner contrary to Federal requirements, including Title VI of the Civil Rights Act of 1964, to prevent submission of a bid, or to prevent consideration of a bid submitted by any responsible contractor adequately qualified in accordance with § 635.108, such provisions shall not be applicable to Federal-aid projects. Where such nonapplicable provisions exist, notices of advertising, specifications, special provisions or other advertising documents shall include a written statement to advise prospective bidders of those provisions that are not applicable.

(f) No procedure or requirement shall be imposed by any State in connection with any project which attempts to restrict competitive bidding, discriminating against the purchase of a surety bond or insurance policy by any surety or insurer outside the State, and authorized to do business in the State.

(g) No public agency shall be permitted to bid in competition, or to enter into subcontracts, with private contractors.

(h) In the event that § 635.309(c) and (2), have not been complied with prior to advertisement, the advertisement specifications shall include:

(1) A statement that physical construction may proceed when authorization is granted, but the contractor will take no action that will result in unnecessary inconvenience, disproportionate injury or any action coercive in nature to occupants of residential businesses, farms, or non-profit organizations who have not yet moved from the right-of-way.

(2) A statement concerning any required or unacquired parcels of right-of-way for which the lack of right-

occupancy and use can be expected to interfere with construction operations;

(3) An estimate of the length of time such interferences can be expected to continue; and

(4) A statement that extensions of time will be granted, if necessary, for delays caused by interferences beyond such estimate period.

(ix)(1) The State highway agency shall include a statement substantially as follows in the advertised specifications:

Title 23, United States Code, section 360(c), requires, as a condition precedent to approval by the Federal Highway Administrator of the contract for this work, that there be filed a sworn statement executed, or on behalf of the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract. This sworn statement shall be in the form of an affidavit executed and sworn to by the successful bidder before a person who is authorized by the laws of this State to administer oaths. The original of such sworn statement shall be filed with the State highway agency prior to the award of the contract.

(2) As a prerequisite to the division administrator's formal concurrence in the award of the construction contract, the State highway agency must submit a copy of the required statement to the division engineer, or advise the division administrator, in writing that the required statement has been received and is on file with the State highway agency.

FR 35152, Sept. 30, 1974, as amended at FR 14906, Apr. 3, 1975; 40 FR 36319, Aug. 1975; 49 FR 28550, July 13, 1984]

### § 635.108 Licensing and qualification of contractors.

a) No procedure or requirement for prequalification, qualification or licensing of contractors shall be approved which, in the judgment of the Administrator, may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the State wherein

the work is to be performed. No contractor shall be required by law, regulation or practice to obtain a license before he may submit a bid or before his bid may be considered for award of a contract. This, however, is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding. Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating. Requirements for the prequalification, qualification or licensing of contractors, that operate to govern the amount of work that may be bid upon by, or may be awarded to, a contractor, shall be approved only if based upon a full and appropriate evaluation of the contractor's capability to perform the work.

(b) The procedures and requirements a State highway agency proposes to use for qualifying and licensing contractors, who may bid for, be awarded, or perform Federal-aid highway contracts, shall be submitted to the division administrator for advance approval. Only those procedures and requirements so approved shall be effective with respect to Federal-aid highway projects. Any changes in approved procedures and requirements shall likewise be subject to approval by the division administrator.

(c) For purposes of evaluating compliance with the requirements of Title VI of the Civil Rights Act of 1964 in these areas, the State highway agency shall establish procedures and maintain records that will identify contractors and subcontractors with regard to minority or nonminority classification within 90 days after the effective date of this subsection.

### § 635.109 Bid opening and bid tabulations.

All bids received in accordance with the terms of the advertisement shall be publicly opened and announced either item by item or by total amount. If any bid received is not read



aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the letting. The State highway agency shall prepare and forward tabulations of bids to the division administrator. These tabulations shall be certified by a responsible State highway agency official and shall show (a) item details for at least the low three acceptable bids and (b) the total amounts of all other acceptable bids.

§ 635.110 Tied bids.

(a) Two or more Federal-aid projects may be tied together for bidding purposes where it appears that by so doing more favorable bids may be received. To avoid discrimination against contractors desiring to bid upon a lesser amount of work than that included in the tied combinations, provisions should be made to permit bidding separately on the individual projects whenever they are of such character as to be suitable for bidding independently.

(b) Federal-aid projects and State-financed projects may be combined in one contract where the conditions and size of the projects are so similar that the unit costs on the Federal-aid projects will not be increased by such combination of projects. In such cases, like quantities should be combined in the proposal to avoid the possibility of unbalancing of bids in favor of either of the projects in the combination.

(c) The State highway agency may tie or allow to be tied, proposals for a Federal-aid project and a State-financed project where conditions are other than as outlined in § 635.110(b). The bid schedule shall set forth the quantities separately for the Federal-aid work and the State-financed work. All proposals submitted for the tied projects must contain separate bid prices for each project individually. Federal participation in the cost of the work will be on the basis of the unit prices presented in the proposal by the individual contractor who would be the lowest responsible bidder if only the Federal-aid project were considered.

[39 FR 35152, Sept. 30, 1974, as amended at 40 FR 14906, Apr. 3, 1975]

§ 635.111 Award of contract and concurrence in award.

(a) The State highway agency shall formally request concurrence by the division administrator in the award of all Federal-aid contracts. Concurrence in award by the division administrator is a necessary prerequisite to Federal participation in the construction of the project. His concurrence shall be considered authority to proceed with construction, unless specifically stated otherwise.

(b) Contracts shall be awarded within the time established by the State highway agency to the lowest responsible bidder subject to the concurrence of the division administrator.

(c) If the State highway agency determines that the lowest bidder is not qualified, it shall so notify the division administrator and obtain his concurrence before making an award to the next lowest responsible bidder if such bid is otherwise acceptable.

(d) If the State highway agency proposes to reject or decline to readjust an otherwise low bid on the ground that it is irregular because of noncompliance with a bidding requirement, it shall submit justification not waiving such requirements unless the noncompliance involves one of the following items:

- (1) Failure to sign the bid.
- (2) Failure to furnish required amount of guarantee.
- (3) Failure to include a unit price for each item in the bid schedule.
- (4) Failure to include a total amount for the bid.
- (5) Bid is not typed or in ink.
- (6) Bid contains conditions or qualifications not provided for in the specifications.
- (7) Bidder is not prequalified and though approved prequalification procedures are in effect.

If such justification is not considered by the division administrator to be sufficient, concurrence will not be given to an award to another bidder on the contract at the same letting.

(e) Any proposal by the State highway agency to reject all bids received for a Federal-aid project shall be submitted to the division administrator

for concurrence, accompanied by adequate justification.

#### § 635.112 Agreement estimate.

(a) Following the award of contract, an agreement estimate based on the contract unit prices and estimated quantities shall be prepared by the State highway agency and submitted to the division administrator as soon as practicable for use in the preparation of the project agreement. The agreement estimates shall include the actual or best estimated costs of any other items to be included in the project agreement.

(b) An agreement estimate shall be submitted by the State highway agency for each force account project when the plans and specifications are submitted to the division administrator for approval. It shall normally be based on the estimated quantities and the unit prices agreed upon in advance between the State highway agency and the division administrator, whether the work is to be done by the State highway agency or by a county or other political subdivision. Such agreed unit prices shall constitute a firm commitment as the basis for Federal participation in the cost of the project. The unit prices shall be based upon the estimated actual cost of performing the work but shall in no case exceed unit prices currently being obtained by competitive bidding on comparable highway construction work in the same general locality. In special cases involving unusual circumstances, the estimate may be based upon the estimated cost for labor, materials, equipment rentals, supplies and supervision to complete the work rather than upon agreed unit prices. This subsection shall not be applicable to agreement estimates for railroad and utility force account work.

#### § 635.113 Subcontracting.

(a) Contracts for projects shall specify the minimum percentage of work that a contractor must perform with his/her own organization. This percentage shall be not less than 30 percent of the total original contract price excluding any identified specialty items.

(b) Upon the request of a State highway agency, the requirements of this section may be modified in whole or in part by the FHWA to such extent as the FHWA determines to be in the public interest.

(c) The State highway agency shall not permit any of the contract work to be performed under a subcontract, unless such arrangement has been authorized by the State highway agency in writing. Prior to authorizing a subcontract, the State highway agency shall assure that the subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

[47 FR 36634, Aug. 26, 1982]

#### § 635.114 Participation in progress payments.

Federal funds will participate in the estimated costs to the State highway agency of construction accomplished as the work progresses, based on claims submitted by State highway agency. When the contract provisions provide for stockpiling, the amount of the claim upon which participation is based may include the appropriate value of approved specification materials delivered by the contractor at the project site or other designated location in the vicinity of such construction, or stockpiled by the contractor at a location not in the vicinity of such construction, if the division administrator determines that (a) because of required fabrication at an off-site location the materials cannot be stockpiled in the vicinity of the project, (b) the materials have been purchased by the contractor, and (c) the materials conform with the requirements of the plans and specifications. The quantity of a stockpiled material eligible for Federal participation in any case shall not exceed the total estimated quantity required to complete the project. This value may not exceed the appropriate portion of the value of the contract item or items in which such material is to be incorporated.

#### § 635.119 Use of publicly owned equipment.

(a) Publicly owned equipment should not normally compete with pri-

vately owned equipment on a project to be let to contract. There may be exceptional cases, however, in which the use of equipment of the State or local unit of government for highway construction purposes may be warranted or justified. A proposal by any State highway agency for the use of publicly owned equipment on such a project must be supported by a showing that it would clearly be in the public interest to do so under the conditions peculiar to the individual project or locality.

(b) As used herein the term "publicly owned equipment" means equipment previously purchased or otherwise acquired by the public agency involved primarily for use in its own operations. The term "rental" includes depreciation and expense of upkeep in addition to other charges.

(c) Where publicly owned equipment is to be made available in connection with construction work to be let to contract, Federal funds may participate in the cost of such work provided the proposed use of such equipment is clearly set forth in the plans, specifications and estimates submitted to the division administrator for approval. In such cases the advertised specifications shall also specify the items of publicly owned equipment available for use by the successful bidder, the rates to be charged therefor, and the points of availability or delivery of the equipment, together with the express condition that the successful bidder has the option either of renting part or all of such equipment from the State or local unit of government or otherwise providing the equipment necessary for the performance of the contract work.

(d) In the rental of publicly owned equipment to contractors, the public agency should not profit at the expense of Federal funds. Accordingly, (1) rental rates shall be reasonably representative of the cost of providing such equipment, or (2) there shall be credited to the project a lump sum amount determined as the approximate profit, if profit is derived by the agency furnishing the equipment, thereby reducing the total participating cost of the project.

(e) Unforeseeable causes may make necessary to provide publicly owned equipment to the contractor at rates agreed to between the contractor and the State or local unit of government. Any such arrangement shall form the basis for any increase in cost of the project on which Federal funds are to participate.

(f) When publicly owned equipment is used on projects constructed on a force account basis, Federal funds may participate whether such work is performed at agreed unit prices, or on an actual cost basis. In the case of force account work to be performed by a State highway agency or local unit of government at agreed unit prices, the equipment need not be itemized at rental rates shown in the estimate. However, if such work is to be performed on an actual cost basis, the State highway agency shall submit to the division administrator for approval the schedule of rates proposed to be charged, exclusive of profit, for the use of publicly owned equipment made available for use.

#### § 635.120 Claims and claim awards.

The eligibility for, and extent of, Federal-aid participation in claim awards made by the State to Federal-aid contractors on the basis of arbitration board awards or State court judgments shall be determined on a case-by-case basis. Generally, the criteria for establishing Federal-aid participation in claims and resultant settlements is the extent to which such settlements are grounded in contract provisions and specifications and actual costs incurred. Where legal issues arise in the course of resolving a claim, and data submitted for consideration shall include a brief from the legal counsel for the State setting forth the basis for determining the extent of the State's liability for the claims under local law.

#### § 635.121 Changes and extra work.

(a) Subsequent to authorization by the division administrator to proceed with a project or any undertaking thereunder, no change shall be made which will increase the cost of the project to the Federal Government or

alter the termini, character or scope of the work without prior authorization by the division administrator.

(b) All major changes in the plans and contract provisions and all major extra work must be approved in writing by the division administrator in advance of their effective dates except that when emergency or unusual conditions justify, the division administrator may, give tentative advance approval orally to such changes or extra work and ratify such approval in writing as soon thereafter as practicable. For minor changes and minor extra work written approval is necessary but such approval may be given retroactively at the discretion of the division administrator. Such minor changes and minor extra work items would include, but not necessarily be limited to, modifications in construction items within the scope of the plans and contract provisions when such modifications are required during the progress of construction.

(c) Proposed changes and extra work involved in nonparticipating operations that may affect the design or participating construction features of the project, shall be subject to review and concurrence by the division administrator.

#### § 635.122 Contract time and contract time extensions.

Contract time extensions granted by State highway agency which affect project costs or liquidated damages, shall be subject to the concurrence of the division administrator and will be considered in determining the amount of Federal participation. To be approved by the division administrator, extensions of contract time must be fully justified and adequately documented.

#### § 635.123 Submission of contract and force account documents.

A conformed copy of the contract between the State highway agency and the construction contractor and of each force account agreement shall be furnished to the division administrator as soon as practicable after it is executed.

#### § 635.124 Labor and employment.

(a) No convict labor shall be employed in construction or used for maintenance or any other purpose at the site or within the limits of any Federal-aid project from the time of award of the construction contract or the start of work on force account construction until final acceptance of the work by the State highway agency.

(b) No procedure or requirement shall be imposed by any State which will operate to discriminate against the employment of labor from any other State, possession or territory of the United States, in the construction of a Federal-aid project. The selection of labor to be employed by the contractor on any Federal-aid project shall be of his own choosing.

(c) Employment shall be provided without regard to race, color, religion, sex, or national origin.

(d) The advertisement or call for bids on any contract for the construction of a project on the Federal-aid system either shall include the minimum wage rates determined therefor by the Secretary of Labor or shall provide that such rates are set out in the advertised specifications, proposal or other contract document, and shall further specify that such rates are a part of the contract covering the project.

(e) When construction work on Federal-aid highway is being performed by any Federal agency under its procedures and by Federal contract, the labor standards relating to direct Federal contracts shall be applicable.

[39 FR 35152, Sept. 30, 1974, as amended at 48 FR 16483, Apr. 18, 1983; 49 FR 14729, Apr. 13, 1984]

#### § 635.125 Health and safety.

Contracts for projects shall include provisions designated (a) to insure full compliance with all applicable Federal, State and local laws governing safety, health and sanitation, and (b) to require that the contractor shall provide all safeguards, safety devices and protective equipment and shall take any other actions reasonably necessary to protect the life and health of persons working at the site of the project and the safety of the public

and to protect property in connection with the performance of the work covered by the contract.

**§ 635.126 Termination and default of contract.**

(a) When a Federal-aid contract is terminated by the State highway agency, the extent of Federal-aid participation in the contract costs, including final settlement, will depend upon the merits of the individual case. In no event will Federal funds participate in any allowance for anticipated profit on work not performed.

(b) Normal Federal-aid plans, specifications, and estimates, advertising, and award procedures are to be followed when a State highway agency awards the contract for completion of a defaulted Federal-aid contract. Under this procedure, the construction amount eligible for Federal participation on the project should not exceed either:

(1) The amount representing the payments made under the defaulted contract plus payments made under the new contract, or

(2) The amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract, whichever amount is the lesser.

(c) If the surety awards a contract for completion of a defaulted Federal-aid contract or completes it by some other acceptable means, the FHWA would then consider the terms of the original contract to be in effect and that the work will be completed in accordance with the approved plans and specifications included therein. No further FHWA approval or concurrence action will therefore be needed in connection with any defaulted Federal-aid contract awarded by a surety. Under this procedure, the construction amount eligible for Federal participation on the project should not exceed the amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

**§ 635.127 False statements.**

The following notice shall be posted on each Federal-aid highway project in one or more places where it is readily available to and viewable by all personnel concerned with the project:

**NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS**

United States Code, Title 18, section reads as follows:

Whoever, being an officer, agent, or employee of the United States, or any State, Territory, or whoever, whether a person, association, firm or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or value of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever, knowingly makes any statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or material furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to the material fact in any statement, certificate, report submitted pursuant to the provisions of the Federal-Aid Road Act approved July 1, 1916 (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000, imprisoned not more than 5 years or both.

**§ 635.128 Determination and documentation of pay quantities.**

(a) The State highway agency shall have procedures in effect which provide adequate assurance that quantities of completed work are determined accurately and on a uniform basis throughout the State. All determinations and all related supporting documents upon which payment based shall be made a matter of record.

(b) Records of initial source documents pertaining to the determination of pay quantities, are among the records and documents which must be retained pursuant to 23 CFR Part 1

## Subpart B—Force Account Construction

### § 635.201 Purpose.

The purpose of this subpart is to prescribe procedures in accordance with 23 U.S.C. 112(b) for a State highway agency to request approval that highway construction work be performed by some method other than contract awarded by competitive bidding.

[48 FR 22912, May 23, 1983]

### § 635.202 Application.

This subpart applies to all Federal-aid and other highway construction projects financed in whole or in part with Federal funds and to be constructed by a State highway agency or a subdivision thereof in pursuant of agreements between any other State highway agency and the Federal Highway Administration (FHWA). This subpart does not apply to projects constructed under a Certification Acceptance Plan in those States where the Secretary has discharged his/her responsibility pursuant to 23 U.S.C. 117, except where employees of a political subdivision of a State are working on a project outside such political subdivision.

[48 FR 22912, May 23, 1983]

### § 635.203 Definitions.

The following definitions shall apply for the purpose of this subpart:

(a) A "State highway agency" is that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" should be considered equivalent to "State highway agency" if the context so implies.

(b) The term "some other method" of construction as used in 23 U.S.C. 112(b) shall mean the "force account" method of construction as defined herein. In the unlikely event that circumstances are considered to justify a negotiated contract or another unusual method of construction, the policies and procedures prescribed herein for force account work will apply.

(c) The term "force account" shall mean the direct performance of highway construction work by a State highway agency, a county, a railroad, or a public utility company by use of labor, equipment, materials, and supplies furnished by them and used under their direct control.

(d) The term "county" shall mean any county, township, municipality or other political subdivision that may be empowered to cooperate with the State highway agency in highway matters.

(e) The term "cost effective" shall mean the efficient use of labor, equipment, materials and supplies to assure the lowest overall cost.

[39 FR 35158, Sept. 30, 1974, as amended at 48 FR 22912, May 23, 1983]

### § 635.204 Determination of more cost effective method.

(a) Congress has expressly provided in the cited legislation that the contract method based on competitive bidding shall be used by a State highway agency or county for performance of highway work financed with the aid of Federal funds unless the State highway agency demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective.

(b) It may be found cost effective for a State highway agency or county to undertake a federally financed highway construction project by force account when a situation exists in which the rights of responsibilities of the community at large are so affected as to require some special course of action, including situations where there is a lack of bids or the bids received are unreasonable.

[48 FR 22912, May 23, 1983]

### § 635.205 Finding of cost effectiveness.

(a) Pursuant to authority in 23 U.S.C. 112(b), it is hereby determined that:

(1) By reason of inherent nature of the operations involved, it is cost effective to perform by force account the adjustment of railroad or utility facilities and similar type facilities owned or operated by a public agency, a railroad or a utility company, provid-

ed that the organization is qualified to perform the work in a satisfactory manner. The installation of new facilities shall be undertaken by competitive bidding except as provided in § 635.205 (b) and (c). Adjustment of railroad facilities shall include minor work on the railroad's operating facilities routinely performed by the railroad with its own forces such as the installation of grade crossing warning devices, crossing surfaces, and minor track and signal work. Adjustment of utility facilities shall include minor work on the utility's existing facilities routinely performed by the utility with its own forces and includes minor installations of new facilities to provide power, minor lighting, telephone, water and similar utility services to a rest area, weigh-station, movable bridge, or other highway appurtenance, provided such installation cannot feasibly be done as incidental to major installation project such as an extensive highway lighting system.

(2) Because of the urgent necessity for timely completion of temporary operations (i.e., emergency repairs, the need for which is concurred in by the Division Administrator, undertaken during or immediately following the occurrence of a natural disaster or catastrophic failure, to reduce the extent of damage, to protect remaining facilities or to restore travel), it is in the public interest to perform such temporary operations either by force account or by the contract method. Therefore, the work may be performed by the method most suited for the work and a formal affirmative finding is not required in either case.

(b) When a State highway agency desires that highway construction work financed with the aid of Federal funds, other than the kinds of work designated under § 635.205(a) or projects constructed under an approved Certification Acceptance Plan, be undertaken by force account, it shall submit a request to the Division Administrator identifying and describing the project and the kinds of work to be performed, the estimated costs therefor, the estimated Federal funds to be provided, and setting forth the reason or reasons that force account

for such project is considered to be cost effective.

(c) The Division Administrator shall notify the State highway agency in writing of his/her determination that under the circumstances relating to the project, force account is or is not found to be cost effective.

[39 FR 35158, Sept. 30, 1974, as amended 48 FR 22913, May 23, 1983]

### Subpart C—Physical Construction Authorization

SOURCE: 40 FR 17251, Apr. 18, 1975, unless otherwise noted.

#### § 635.301 Purpose.

To prescribe the policies and procedures under which a State highway agency may be authorized to advance a Federal-aid highway project to the physical construction stage.

#### § 635.303 Applicability.

The provisions of this subpart are applicable to all Federal-aid highway construction projects except projects constructed under an approved Certification Acceptance Plan.

#### § 635.305 Physical construction.

For purposes of this subpart the physical construction of a project is considered to consist of the actual construction of the highway itself with appurtenant facilities. It includes a removal, adjustment or demolition of buildings or major obstructions, a utility or railroad work that is a part of the contract for the physical construction.

#### § 635.307 Coordination.

(a) The right-of-way clearance, utility, and railroad work are to be so coordinated with the physical construction that no unnecessary delay or cost for the physical construction will occur.

(b) All right-of-way clearance, utility, and railroad work performed separately from the contract for the physical construction of the project are to be accomplished in accordance with the provisions of the following:

- (1) 23 CFR, Part 140, Subpart I;
- (2) 23 CFR, Part 646, Subpart B;

- (3) 23 CFR, Part 713, Subpart A; and  
(4) 23 CFR, Part 645, Subpart A.

[40 FR 17251, Apr. 18, 1975, as amended at  
40 FR 25585, June 17, 1975]

#### § 635.309 Authorization.

Authorization to advertise the physical construction for bids or to proceed with force account construction thereof shall normally be used as soon as, but not until, all of the following conditions have been met:

(a) The plans, specifications, and estimates (PS&E) therefor have been approved.

(b) A statement is received from the State, either separately or combined with the information required by § 635.309(c), that either all right-of-way clearance, utility, and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules. Where it is determined that the completion of such work in advance of the highway construction is not feasible or practical due to economy, special operational problems and the like, there shall be appropriate notification provided in the bid proposals identifying the right-of-way clearance, utility, and railroad work which is to be undertaken concurrently with the highway construction.

(c) A statement is received from the State certifying that all individuals and families have been relocated to decent, safe and sanitary housing or the State has made available to relocate adequate replacement housing in accordance with the provisions of the current Federal Highway Administration (FHWA) directive(s) covering the administration of the Highway Relocation Assistance Program and that one of the following has application:

(1) All necessary rights-of-way, including control of access rights when pertinent, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court but legal possession has been obtained. There may be some improvements remaining on the right-of-way if all occupants have vacated the lands and improvements and the State has physical possession and the right

to remove, salvage, or demolish these improvements and enter on all land.

(2) Although all necessary rights-of-way have not been fully acquired, the right to occupy and to use all rights-of-way required for the proper execution of the project has been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained but right of entry has been obtained, the occupants of all lands and improvements have vacated and the State has physical possession and right to remove, salvage, or demolish these improvements.

(3) The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 23 CFR 740.12. The State may request authorization on this basis only in very unusual circumstances. This exception must never become the rule. Under these circumstances, advertisement for bids or force-account work may be authorized if FHWA finds that it will be in the public interest. The physical construction may then also proceed, but the State shall ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the right-of-way are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature. When the State requests authorization to advertise for bids and to proceed with physical construction where acquisition or right of occupancy and use of a few parcels has not been obtained, full explanation and reasons therefor including identification of each such parcel will be set forth in the State's request along with a realistic date when physical occupancy and use is anticipated as well as substantiation that such date is realistic. Appropriate notification shall be provided in the bid proposals identifying all locations where right of occupancy and use has not been obtained.

(d) The State highway agency has satisfied the requirements of 23 CFR Part 790 where applicable or, under alternate procedures which have been accepted by FHWA, has submitted



public hearing transcripts, certifications and reports pursuant to 23 U.S.C. 128.

(e) An affirmative finding of cost effectiveness has been made as required by 23 U.S.C. 112, in case construction by some method other than contract based on competitive bidding is contemplated.

(f) Minimum wage rates determined by the Department of Labor in accordance with the provisions of 23 U.S.C. 113, are in effect and will not expire before the end of the period within which it can reasonably be expected that the contract will be awarded.

(g) A statement has been received that right-of-way has been acquired or will be acquired in accordance with the current FHWA directive(s) covering the acquisition of real property or that acquisition of right-of-way is not required.

(h) A statement has been received that the steps relative to relocation advisory assistance and payments as required by the current FHWA directive(s) covering the administration of the Highway Relocation Assistance Program have been taken, or that they are not required.

(i) The FHWA Division Administrator has determined that appropriate measures have been included in the PS&E in keeping with approved guidelines, for minimizing possible soil erosion and water pollution as a result of highway construction operations.

(j) The FHWA Division Administrator has determined that requirements of 23 CFR, Part 771 have been fulfilled and appropriate measures have been included in the PS&E to ensure that conditions and commitments made in the development of the project to mitigate environmental harm will be met.

(k) Where utility facilities are to use and occupy the right-of-way, the State has demonstrated to the satisfaction of the FHWA Division Administrator that the provisions of 23 CFR 645.116(b) have been fulfilled.

(l) The FHWA Division Administrator has verified the fact that adequate replacement housing is in place and has been made available to all affected persons.

(m) Where applicable, areawide agency review has been accomplished as required by 42 U.S.C. 3334 and 4231-4233.

(n) The FHWA Division Administrator has determined that the PS&E provide for the erection of only the information signs and traffic control devices that conform with the standards developed by the Secretary of Transportation and do not include construction identification or other informational signs regarding such State matters as the identification of responsible State officials.

[40 FR 17251, Apr. 18, 1975; 40 FR 36 Aug. 20, 1975, as amended at 47 FR 47 Oct. 25, 1982; 48 FR 22913, May 26, 1983; FR 28550, July 13, 1984]

## Subpart D—General Material Requirements

SOURCE: 41 FR 36204, Aug. 27, 1976, unless otherwise noted.

### § 635.401 Purpose.

The purpose of this subpart is to prescribe requirements and procedures relating to product and material selection and use on Federal-aid highway projects.

### § 635.403 Definitions.

As used in this subpart, the following terms have the meanings indicated:

(a) "*FHWA Division Administrator*" means the chief Federal Highway Administration (FHWA) official assigned to conduct business in a particular State;

(b) "*Material*" means any tangible substance incorporated into a Federal-aid highway project;

(c) "*PS&E*" means plans, specifications, and estimates;

(d) "*Special provisions*" means additions and revisions to the standard or supplemental specifications applicable to an individual project;

(e) "*Standard specifications*" means a compilation in book form of specifications approved for general application and repetitive use;

(f) "*State*" has the meaning set forth in 23 U.S.C. 101;

(g) "State highway agency" means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction;

(h) "Supplemental specifications" means approved additions and revisions to the standard specifications.

#### 635.405 Applicability.

The requirements and procedures described in this subpart apply to all contracts relating to Federal-aid highway projects, except those constructed under a Certification Acceptance Plan.

#### 635.407 Use of materials made available by a public agency.

(a) Contracts for highway projects shall require the contractor to furnish materials to be incorporated in the work and shall permit the contractor to select the sources from which the materials are to be obtained. Exception to this requirement may be made when there is a definite finding by the State highway agency and concurred by the FHWA Division Administrator, that it is in the public interest to require the contractor to use material furnished by the State highway agency or from sources designated by the State highway agency. In cases such as this, the FHWA does not expect mutual sharing of costs unless the State highway agency receives a stated credit from another agency or official subdivision of the State. Where such a credit does accrue to the State highway agency, it shall be applied to the Federal-aid project involved. The designation of a mandatory material source may be permitted based on environmental considerations, provided the environment would be substantially enhanced without excessive cost. Otherwise, if a State highway agency proposal to designate a material source for mandatory use would result in higher project costs, Federal-aid funds shall not participate in the increase even if the designation would conserve other public funds.

(b) The provisions of paragraph (a) of this section will not preclude the designation in the plans and specifications of sources of local natural materials, such as borrow aggregates, that

have been investigated by the State highway agency and found to contain materials meeting specification requirements. The use of materials from such designated sources shall not be mandatory unless there is a finding of public interest as stated in paragraph (a) of this section.

(c) Federal funds may participate in the cost of specifications materials made available by a public agency when they have been actually incorporated in accepted items of work, or in the cost of such materials meeting the criteria and stockpiled at the locations specified in § 635.114 of this chapter.

(d) To be eligible for Federal participation in its cost, any material, other than local natural materials, to be purchased by the State highway agency and furnished to the contractor for mandatory use in the project, must have been acquired on the basis of competitive bidding, except when there is a finding of public interest justifying the use of another method of acquisition. The location and unit price at which such material will be available to the contractor must be stated in the special provisions for the benefit of all prospective bidders. The unit cost eligible for Federal participation will be limited to the unit cost of such material to the State highway agency.

(e) When the State highway agency or another public agency owns or has control over the source of a local natural material the unit price at which such material will be made available to the contractor must be stated in the plans or special provisions. Federal participation will be limited to (1) the cost of the material to the State highway agency or other public agency; or (2) the fair and reasonable value of the material, whichever is less. Special cases may arise that will justify Federal participation on a basis other than that set forth above. Such cases should be fully documented and receive advance approval by the FHWA Division Administrator.

(f) Costs incurred by the State highway agency or other public agency for acquiring a designated source or the right to take materials from it will not be eligible for Federal participation if

the source is not used by the contractor.

(g) The contract provisions for one or a combination of Federal-aid projects shall not specify a mandatory site for the disposal of surplus excavated materials unless there is a finding by the State highway agency with the concurrence of the FHWA Division Administrator that such placement is the most economical except that the designation of a mandatory site may be permitted based on environmental considerations, provided the environment would be substantially enhanced without excessive cost.

**§ 635.409 Restrictions upon materials.**

No requirement shall be imposed and no procedure shall be enforced by any State highway agency in connection with a project which may operate:

(a) To require the use of or provide a price differential in favor of articles or materials produced within the State, or otherwise to prohibit, restrict or discriminate against the use of articles or materials shipped from or prepared, made or produced in any State, territory or possession of the United States; or

(b) To prohibit, restrict or otherwise discriminate against the use of articles or materials of foreign origin to any greater extent than is permissible under policies of the Department of Transportation as evidenced by requirements and procedures prescribed by the FHWA Administrator to carry out such policies.

**§ 635.410 Buy America requirements.**

(a) The provisions of this section shall prevail and be given precedence over any requirements of this subpart which are contrary to this section. However, nothing in this section shall be construed to be contrary to the requirements of § 635.409(a) of this subpart.

(b) No Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed unless at least one of the following requirements is met:

(1) The project either: (i) includes no permanently incorporated steel materials, or (ii) if steel materials are to be used, all manufacturing processes for

these materials must occur in United States.

(2) The State has standard contract provisions that require the use of domestic materials and products, including steel materials, to the same greater extent as the provisions set forth in this section.

(3) The State elects to include alternate bid provisions for foreign and domestic steel materials which comply with the following requirements: (i) a procedure for obtaining alternate bids based on furnishing foreign steel materials which is acceptable to the Division Administrator may be used. (ii) contract provisions must (1) require bidders to submit a bid based on furnishing domestic steel materials, (ii) clearly state that the contract be awarded to the bidder who submits the lowest total bid based on furnishing domestic steel materials unless such total bid exceeds the lowest total bid based on furnishing foreign steel materials by more than 25 percent.

(4) When steel materials are used on a project, the requirements of this section do not prevent a minimal use of foreign steel materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel product they are delivered to the project.

(c)(1) A State may request a waiver of the provisions of this section if:

(i) The application of those provisions would be inconsistent with the public interest; or

(ii) Steel materials/products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.

(2) A request for waiver, accompanied by supporting information, must be submitted in writing to the Regional Federal Highway Administrator (RFHWA) through the FHWA Division Administrator. A request must be submitted sufficiently in advance of the need for the waiver in order to allow time for proper review and action on the request. The RFHWA will have approval authority on the request.

(3) Requests for waivers may be made for specific projects, or for certain materials or products in specific geographic areas, or for combinations of both, depending on the circumstances.

(4) The denial of the request by the FHWA may be appealed by the State to the Federal Highway Administrator (Administrator), whose action on the request shall be considered administratively final.

(5) A request for a waiver which involves nationwide public interest or availability issues or more than one FHWA region may be submitted by the State to the Administrator for consideration.

(6) A request for waiver and an appeal from a denial of a request must include facts and justification to support the granting of the waiver. The FHWA response to a request or appeal must be in writing and made available to the public upon request. Any request for a nationwide waiver and the FHWA's action on such a request may be published in the FEDERAL REGISTER with public comment.

(7) In determining whether the waiver described in paragraph (c)(1) of this section will be granted, the FHWA will consider all appropriate factors including, but not limited to, administrative burden, and delay that would be imposed if the provision were not waived.

(8) Standard State and Federal-aid contract procedures may be used to ensure compliance with the requirements of this section.

U.S.C. 315, sec. 10 of Pub. L. 98-229, 98 Stat. 55, sec. 165 of Pub. L. 97-424, 96 Stat. 1553, and 49 CFR 1.48(b))

49 CFR 53.104, Nov. 25, 1983, as amended at 49 CFR 188.21, May 3, 1984]

#### 635.411 Material or product selection.

(a) Federal funds shall not participate, directly or indirectly, in payment for any premium or royalty on any patented or proprietary material, specification, or process specifically set forth in the plans and specifications for a project, unless:

(1) Such patented or proprietary material is purchased or obtained through competitive bidding with equally suitable nonpatented items; or

(2) The State highway agency certifies either that such patented or proprietary item is essential for synchronization with existing highway facilities, or that no equally suitable alternate exists; or

(3) Such patented or proprietary item is used for research or for a distinctive type of construction on relatively short sections of road for experimental purposes.

(b) When there is available for purchase more than one nonpatented, nonproprietary material, semifinished or finished article or product that will fulfill the requirements for an item of work of a project and these available materials or products are judged to be of satisfactory quality and equally acceptable on the basis of engineering analysis and the anticipated prices for the related item(s) of work are estimated to be approximately the same, the PS&E for the project shall either contain or include by reference the specifications for each such material or product that is considered acceptable for incorporation in the work. If the State highway agency wishes to substitute some other acceptable material or product for the material or product designated by the successful bidder or bid as the lowest alternate, and such substitution results in an increase in costs, there will not be Federal-aid participation in any increase in costs.

(c) A State highway agency may require a specific material or product when there are other acceptable materials and products, when such specific choice is approved by the Division Administrator as being in the public interest. When the Division Administrator's approval is not obtained, the item will be nonparticipating unless bidding procedures are used that establish the unit price of each acceptable alternative. In this case Federal-aid participation will be based on the lowest price so established.

(d) Appendix A sets forth the FHWA requirements regarding (1) the specification of alternative types of culvert pipes, and (2) the number and types of such alternatives which must be set forth in the specifications for various types of drainage installations.

(e) Reference in specifications and on plans to single trade name materials will not be approved on Federal-aid contracts.

**§ 635.413 Guaranty and warranty clauses.**

(a) Except as provided in paragraph (b) of this section, clauses that require the contractor to guarantee or warrant materials and workmanship or to otherwise maintain the work for a specified period after its satisfactory completion by the contractor and its final acceptance by the State, will not be approved for use in Federal-aid contracts. Work performed and materials replaced under such guaranty or warranty clauses after final acceptance of

work are not eligible for Federal participation.

(b) Contracts which involve furnishing and/or installing electrical or mechanical equipment should generally include contract clauses that require—

(1) Manufacturer's warranties guarantees on all electrical and mechanical equipment consistent with those provided as customary trade practice, or

(2) Contractors' warranties or guarantees providing for satisfactory service operation of the mechanical and electrical equipment and related components for a period not to exceed 6 months following project acceptance.

**APPENDIX A—SUMMARY OF ACCEPTABLE CRITERIA FOR SPECIFYING TYPES OF CULVERT PIPE**

| Type of drainage installation                                    | Alternatives required |    |           | AASHTO designations to be included with alternatives | Application              | Remarks                                                     |
|------------------------------------------------------------------|-----------------------|----|-----------|------------------------------------------------------|--------------------------|-------------------------------------------------------------|
|                                                                  | Yes                   | No | Number    |                                                      |                          |                                                             |
| Cross drains under high-type pavement. <sup>1</sup>              |                       | X  |           |                                                      | Statewide                | Any AASHTO approved material. <sup>2</sup> Do. <sup>2</sup> |
| Other cross-drain installations.                                 | X                     |    | 3 minimum | M-170 and M-190.                                     | do                       | Do. <sup>2</sup>                                            |
| Side-drain installations                                         | X                     |    | do        | M-36                                                 | do                       | Do. <sup>2</sup>                                            |
| Special installation conditions.                                 |                       | X  |           |                                                      | Individual installation. | Specified to meet special conditions.                       |
| Special drainage systems (storm sewers, inverted siphons, etc.). |                       | X  |           |                                                      | do                       | Specified to meet site requirements.                        |

<sup>1</sup> High-type pavement is generally described as FHWA construction type codes I, J, K, L, and plant mix and permeable macadam segments, respectively shown in the right-hand columns of type codes G and H having a combined thickness surface and base of 7 in or more (or equivalent) or that are constructed on rigid bases.

<sup>2</sup> Types not included in currently approved AASHTO specifications may be specified if recommended by the State with adequate justification and approved by FHWA.

**Subpart E—Interstate Maintenance Guidelines**

**AUTHORITY:** 23 U.S.C. 109(m), 116, 119(b), and 315; 49 CFR 1.48(b).

**SOURCE:** 45 FR 20793, Mar. 31, 1980, unless otherwise noted.

**§ 635.501 Purpose.**

To prescribe Interstate maintenance guidelines and establish the policy and procedures to insure that the condition of Interstate routes is maintained at the level required by the purposes for which they were designed.

**§ 635.503 Policy.**

The policy of the FHWA is to insure that each State highway agency develops and implements an Interstate maintenance program conforming to the guidelines in this subpart. The maintenance program shall be consistent with practices deemed necessary to adequately provide for motorist safety, preservation of the highways, rideability, and aesthetics.

**§ 635.505 Maintenance guidelines.**

(a) The following critical elements should serve to direct the development and implementation of an Interstate maintenance program in each State.

(1) *Roadway surfaces.* Preservation of the structural integrity of the roadway and the safety and comfort of the user. This includes a safe, smooth, skid-resistant surface, as close as practical to the original, or subsequently improved, grade and cross section.

(2) *Shoulders.* Preservation of a safe, smooth surface which is free of obstruction, contiguous with the adjacent roadway surface, and as close as practical to the original, or subsequently improved, grade and cross section.

(3) *Roadside.* Preservation of the roadside in a safe, pleasant, and forgiving manner through vegetation management, erosion control, and litter pick-up.

(4) *Drainage.* Preservation of hydraulic capacity for which originally designed.

(5) *Bridges and tunnels.* Preservation of the structural and operational characteristics for which originally designed. These include safe, smooth, skid-resistant surfaces; proper surface drainage; and adequate functioning bearing devices and substructural elements. Replacement or repair of structural railing and approach guardrail should be done without unreasonable delay. Tunnels should be cleaned, properly lighted, and adequately ventilated.

(6) *Snow and ice control.* Preservation of the roadway safety, efficiency, and environment during winter driving conditions.

(7) *Traffic control devices.* Preservation of clean, legible, visible, and properly functioning traffic control devices. This includes pavement markings, signing, delineators, signals, etc.

(8) *Safety appurtenances.* Replacement of damaged, defective, and/or inoperable devices without unreasonable delay. This includes guardrails, impact attenuators, breakaway supports, barriers, etc.

(9) *Safety rest areas.* Preservation and operation of facilities reasonably necessary for the convenience, relaxation, and informational needs of the user.

(10) *Access control.* Preservation of the originally designed access control, elimination of unauthorized traffic movement, and prevention of improper

or unauthorized use of the highway rights-of-way.

(11) *Traffic safety in maintenance and utility work zones.* Procedures that will aid the safety of motorists and maintenance workers. The procedures shall be consistent with the provisions of 23 CFR Part 630, Subpart J, and Part VI of the Manual on Uniform Traffic Control Devices.<sup>1</sup>

(b) All replacements and repairs should conform to the currently approved design standards (23 CFR Part 625) for all critical elements listed in paragraph (a) of this section. Exceptions for minor repairs must be clearly defined in a State's maintenance program.

(c) These guidelines shall be interpreted to expect that repairs and maintenance will be performed without unreasonable delay, that variations from the State's approved program will be allowed in situations involving emergency or unforeseeability, and that the State will seek to attain a high level of maintenance.

#### § 635.507 Implementation.

(a) Each State highway agency shall prepare an initial program submission which shall include a description of the State's Interstate maintenance program; a discussion of the method by which the State manages its program, including copies of operating documents; and a general description of the level of resources and activity the State intends to devote to attain the objectives stated under each of the critical elements in § 635.505(a). This initial submission shall be made to the FHWA no later than 120 days after the effective date of this subpart. The FHWA shall review each State's initial program submission for conformance with the provisions of this subpart and approve or disapprove the submission on the basis of that review.

(b) Within one year after the effective date of this subpart, and by January 1 of each subsequent year, each

<sup>1</sup> Available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (GPO Stock Number 050-001-81001-8), and for inspection and copying as prescribed in 49 CFR 7, App. D.

State highway agency shall certify to the FHWA that it has an Interstate maintenance program as required by this subpart and that its Interstate routes are being maintained in accordance with that program.

(c) Beginning in 1981 and each year thereafter, each State highway agency shall update its initial program submission by providing the FHWA with a discussion of:

(1) The condition of the State's Interstate routes and deficiencies,

(2) State maintenance priorities,

(3) The State maintenance budget, and

(4) Exceptions and/or revisions to the initial submission.

(d) The FHWA shall review each State's annual submission for conformance with the provisions of this subpart and monitor the implementation of each State's program in accordance with the review procedures described in the FHWA Maintenance Review Manual<sup>1</sup> and the Federal-Aid Highway Program Manual, Volume 6, Chapter 4, Section 3, Subsection 1.<sup>2</sup> If differences between the State and the FHWA cannot be resolved concerning the adequacy of the Interstate maintenance program's level of resources and activity, the FHWA shall initiate action under § 635.509.

**§ 635.509 Deficient or unsatisfactory maintenance.**

(a) *Fund reduction.* If a State fails to certify as required by this subpart, or if the Secretary determines that a State is not adequately maintaining its Interstate routes in accordance with a maintenance program as required by this subpart, the Federal-aid highway funds apportioned to the State for the next fiscal year (after the date on which the State must certify) shall be reduced by an amount equal to 10 percent of the amount which would otherwise be apportioned to the State under 23 U.S.C. 104. In addition, future project approvals may be withheld by the Secretary under 23 U.S.C. 116.

(b) *Procedure for reduction of funds.*

(1) If it appears to the Federal High-

way Administrator that a State has not submitted a certification conforming to the requirements of this subpart, or that a State is not adequately maintaining its Interstate routes in accordance with a maintenance program as required by this subpart, the Administrator shall make in writing proposed determination of nonconformity, and shall notify the Governor of the State of the proposed determination by certified mail. The notice shall state the reasons for the proposed determination and inform the State that it may within 30 days from the date of the letter request a hearing to show cause why it should not be found in nonconformity. If the State informs the Administrator before the end of the 30-day period that it wishes to attempt to resolve the matter informally, the Administrator may extend the time for requesting a hearing an additional 30 days. In the event of a request for informal resolution, the State and the Administrator (or designees) shall promptly schedule a meeting to resolve the matter.

(2) If a State does not request a hearing in a timely fashion as provided in paragraph (b)(1) of this section, the Administrator shall forward the proposed determination to the Secretary. Upon approval by the Secretary, the provisions of paragraph (a) of this section shall take effect immediately.

(3) If a State requests a hearing, the Secretary shall expeditiously convene a hearing on the record, which shall be conducted according to the provisions of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* Based on the record of the proceeding, the Secretary shall determine whether the State is in nonconformity with this subpart. If the Secretary determines that the State is in nonconformity with the provisions of paragraph (a) of this section shall take effect immediately.

(4) The Secretary may reduce 10 percent of a State's apportionment of funds under 23 U.S.C. 104 prior to the administrative determination under this section in order to prevent the apportionment to the State of funds which would be affected by a determination of nonconformity.

(5) Funds withheld pursuant to a final administrative determination

<sup>1</sup>, <sup>2</sup> Available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

under this section shall be reapportioned to all other eligible States one year from the date of this determination, unless before this time the Secretary determines, on the basis of information submitted by the State and the FHWA, that the State has come into conformity with this section. If the Secretary determines that the State has come into conformity, the withheld funds shall be released to the State.

(6) The reapportionment of funds under paragraph (b)(5) of this section shall be stayed during the pendency of any proceeding for judicial review of a final administrative determination of nonconformity made by the Secretary.

## PART 637—CONSTRUCTION INSPECTION AND APPROVAL

### Subpart A—[Reserved]

### Subpart B—Sampling and Testing of Materials and Construction

- § 637.201 Purpose.
- § 637.203 Definitions.
- § 637.205 Policy.
- § 637.207 Procedure.

### APPENDIX A—GUIDE LETTER OF CERTIFICATION BY STATE ENGINEER

### Subpart A—[Reserved]

### Subpart B—Sampling and Testing of Materials and Construction

**AUTHORITY:** 23 U.S.C. 114, 204, 206, 209, 40, and 315; 49 CFR 1.48(b).

**SOURCE:** 44 FR 2171, Jan. 10, 1979, unless otherwise noted.

#### § 637.201 Purpose.

The purpose of this regulation is to prescribe policies, procedures, and guides relating to sampling and testing of materials and construction in Federal-aid highway projects, except those constructed pursuant to 23 U.S.C. 117.

#### § 637.203 Definitions.

(a) The term "acceptance samples and tests" means all of the samples and tests used for determining the quality and acceptability of the materials and workmanship which have

been or are being incorporated in the project.

(b) The term "independent assurance samples and tests" means independent samples and tests or other procedure performed by State personnel who do not normally have direct responsibility for process control and acceptance sampling and testing. They are used for the purpose of making independent checks on the reliability of the results obtained in acceptance sampling and testing.

(c) The term "national reference laboratories" means the American Association of State Highway and Transportation Officials (AASHTO) Materials Reference Laboratory (AMRL) and the Cement and Concrete Reference Laboratory (CCRL), each operated by the National Bureau of Standards.

### § 637.205 Policy.

(a) *Sampling and testing program.* It is the policy of the Federal Highway Administration (FHWA) that each State highway agency shall develop a sampling and testing program which will provide adequate assurance that the materials and workmanship incorporated in each Federal-aid highway construction project are in reasonably close conformity with the requirements of the approved plans and specifications including approved changes. The program shall have provisions for acceptance and independent assurance samples and tests. The program shall be approved by FHWA.

(b) *National reference laboratories.* It is the policy of FHWA to encourage all State highway agencies to participate in each regular inspection tour and comparative sample testing program of the CCRL and AMRL.

### § 637.207 Procedure.

Each State's acceptance and independent assurance sampling and testing program shall provide for the following:

(a) The point in the construction process at which sampling and testing is to be done.

(b) A guide schedule for sampling and testing materials which will give general guidance to personnel responsible for the program yet give them



reasonable latitude for adaption to specific project needs.

(c) A reasonable portion of the independent assurance sampling and testing be performed by personnel who have no direct responsibility for acceptance sampling and testing using test equipment other than that assigned to the project. The program may permit the remainder of the independent samples and tests to be accomplished by independent observation of the acceptance sampling and testing or with the use of project assigned equipment.

(d) A prompt comparison of acceptance test results with independent assurance test results.

(e) The preparation and submission of a material certification conforming in substance to Appendix A of this regulation to the FHWA Division Administrator for each construction project.

#### APPENDIX A—GUIDE LETTER OF CERTIFICATION BY STATE ENGINEER

Date \_\_\_\_\_  
Project No. \_\_\_\_\_  
This is to certify that:

The results of the tests on acceptance samples indicate that the materials incorporated in the construction work and the construction operations controlled by sampling and testing were in reasonably close conformity with the approved plans and specifications, and such results compare favorably with the results of independent assurance sampling and testing.  
Exceptions to this certification are documented in the project records.

Director of Laboratory  
or other  
Appropriate State Official

#### PART 640—CERTIFICATION ACCEPTANCE

Sec.

- 640.101 Purpose.
- 640.103 Definitions.
- 640.105 Effect of certification acceptance.
- 640.107 Coverage.
- 640.109 Requirements for certification acceptance.
- 640.111 Content of State certification.
- 640.113 Procedures.
- 640.115 Evaluations.

Sec.

640.117 Rescission.

#### APPENDIX A—FHWA REPORTS

AUTHORITY: 23 U.S.C. 101(e), 117, and; 49 CFR 1.48(b).

SOURCE: 43 FR 46963, Oct. 12, 1978, unless otherwise noted.

#### § 640.101 Purpose.

The purpose of this regulation is to provide instructions for preparation and acceptance of State certification proposals to accomplish the policies and objectives of title 23, United States Code, using State laws, regulations, directives, and standards. The procedures covered are procedures for administering projects under certification acceptance and evaluating State performance.

#### § 640.103 Definitions.

As used in this regulation:

(a) *Certification acceptance*—The alternative procedure authorized by 23 U.S.C. 117(a) for administering Federal-aid projects not on the Interstate System.

(b) *Secondary road plan*. A written statement setting forth the standards and procedures adopted by the State highway agency to be used in the administration of Federal-aid projects on the Federal-aid secondary road system (23 CFR 642).

(c) *State certification*. A written statement prepared by a State highway agency setting forth the laws, regulations, directives, and standards will use, or cause to be used, in the administration of certain highway projects.

[43 FR 46963, Oct. 12, 1978, as amended; 47 FR 47239, Oct. 25, 1982]

#### § 640.105 Effect of certification acceptance.

(a) Acceptance of a State certification permits a State to discharge certain responsibilities otherwise assigned to the Secretary under title 23, United States Code, for Federal-aid projects. A State may permit performance of project certification by capable local governments.

(b) Acceptance of a State certification does not constitute a commitment or obligation of Federal funds.

(c) Acceptance of a State certification does not preclude FHWA access to and review of a Federal-aid project at any time.

(d) Certification acceptance as an alternative procedure does not replace the fundamental provisions of law in title 23 with respect to the basic structure of the Federal-aid highway program, such as the authorization of funds (23 U.S.C. 102), Federal-aid systems (23 U.S.C. 103), apportionments (23 U.S.C. 104), programs (23 U.S.C. 105), designation of urbanized area boundaries (23 U.S.C. 101(a)), allocation of urban system funds (23 U.S.C. 106), Federal share payable (23 U.S.C. 107), toll roads and bridges (23 U.S.C. 108), and maintenance (23 U.S.C. 116). Acceptance of a CA proposal does not preclude application of any provision in title 23 that may be advantageous to the State.

(e) Nothing in this regulation shall affect or discharge any responsibility or obligation of the FHWA under any Federal law other than title 23.

#### § 640.107 Coverage.

(a) Certification acceptance may apply to projects on all Federal-aid highway systems except the Interstate System. If other FHWA regulations in title 23 permit, projects not on a Federal-aid system may be administered under the provisions of an accepted State certification.

(b) The CA procedure shall not apply to transportation planning and research (23 U.S.C. 134 and 307), highway safety (chapter 4, title 23), or other public transportation projects administered by FHWA under title 23.

(c) A State certification may provide for either full or partial coverage of eligible systems, programs, phases of work, and classes of projects.

(d) A simplified CA application procedure is provided in paragraph (b) of § 640.109 of this regulation, should a State desire to limit coverage to projects which are both (1) determined to be a nonmajor action in accordance with 23 CFR 771.9 and (2) estimated to cost less than \$500,000 for physical construction. Such limited coverage State certification will apply only to the FHWA responsibilities for

project plans, specifications, estimates, surveys, contract award, design, inspection, and/or construction.

#### § 640.109 Requirements for certification acceptance.

(a) Acceptance of either a full or partial coverage State certification as described in § 640.107(c) will be based upon:

(1) A State request and identification of the State laws, regulations, directives, and standards that will accomplish the policies and objectives contained in or issued pursuant to title 23, United States Code, and

(2) An FHWA finding that the State highway agency has the capability to carry out projects in accordance with such State requirements.

(i) State laws, regulations, directives, and standards, either separately or collectively, must be aimed at accomplishing the following title 23 policies and objectives:

(A) Public involvement in the development of projects in the location and design stages,

(B) Application of appropriate design and construction standards,

(C) Emphasis on increasing safety in location, design, and construction of projects,

(D) Controls to assure quality and economy of construction and maintenance,

(E) Provision of adequate signing, marking, and traffic control devices,

(F) Minimizing adverse economic, social, and environmental impacts of any project,

(G) Equal employment opportunity, nondiscrimination on the basis of sex, and highway construction training,

(H) Competitive bidding and payment of prevailing wage rates on construction contracts, and

(I) Preservation of natural beauty.

(ii) The finding that the State highway agency has the capability to carry out project responsibilities will be based on an FHWA evaluation of the State's performance and resources.

(A) Evaluation of a State's performance shall be based on previously conducted reviews, including secondary road plan reviews, reviews under 23 U.S.C. 109(h), safety reviews and re-

ports, audit reports, reviews of State bidding practices, inspections in depth, and maintenance inspections. If these reviews are considered to be insufficient to form a conclusive judgment, they may be supplemented by inquiries or additional reviews in specific areas to determine the State's performance. These additional reviews may involve examination of a sample of typical projects in varying degrees of development.

(B) Evaluation of a State's resources shall be based on previously conducted reviews, including financial and administrative studies and reports, or on FHWA's general knowledge of the State and its highway agency. If this information is considered to be insufficient to form a reasonable judgment of State resource adequacy, inquiries or additional reviews may be made of the State highway agency. These inquiries or reviews may include such things as the availability of professional and technical personnel, training provided State personnel, control of contract administration, the planned reassignment of responsibilities and/or personnel if the State certification is accepted, and the State's internal review practices.

(b) Acceptance of a limited-coverage State certification as described in § 640.107(d) will be based on an evaluation of the State's operations and performance under an approved secondary road plan. These evaluations must support findings that:

(1) The policies and objectives of title 23, United States Code, are being accomplished under the State's approved secondary road plan and State procedures accepted under 23 U.S.C. 109(h). Supplementary standards and procedures appropriate to the types of projects to be added to the coverage must provide similar assurance, and

(2) The State's performance under the plan has been found to be satisfactory in the last 4 years by an FHWA evaluation of the State's operation.

(c) A State certification may be accepted in whole or in part, depending on FHWA findings. Where minor deficiencies are found, acceptance may be conditioned or may exclude the affected State operations until the deficiencies are corrected. Where deficiencies

are found which are of such magnitude as to create doubt that the policies and objectives of title 23 would be accomplished, the State certification will not be accepted until the deficiencies are corrected.

[43 FR 46963, Oct. 12, 1978, as amended; 47 FR 47239, Oct. 25, 1982]

#### § 640.111 Content of State certification

(a) The State certification shall include the following:

(1) The name of the State highway agency and the legal authority which permits such agency to accomplish policies and objectives contained in title 23, United States Code,

(2) A statement of the systems, programs, phases of work, and classes of projects or combinations thereof which the State is including in the certification being submitted for acceptance,

(3) For submissions providing full or partial coverage of projects as described in § 640.107(c), a listing of title 23 policies and objectives described in § 640.109(a)(2)(i) and a listing of State laws, regulations, directives, and standards that will be applied to accomplish each of them. If the policies and objectives that are not applicable due to partial coverage may be omitted. For submissions providing limited coverage as described in § 640.109(b), supplementary standards and procedures which, together with the State's approved secondary road plan, will apply to the types of projects to be covered. Design standards include noise, geometric, hydraulic, structural (including pavement and traffic control device standards). Construction standards include standard plans and standard specifications covering contract, construction, material requirements, and

(4) A description of the State methods for assuring local government knowledge of and compliance with State and Federal requirements when they perform services on projects administered under this alternative procedure.

(b) Existing assurances and formal agreements between the State and FHWA with respect to equal employment opportunity, current billing, and

control of outdoor advertising will continue in full force and effect and may be incorporated by reference. Likewise, the State's procedures accepted under 23 U.S.C. 109(h) may be incorporated by reference.

(c) State certifications are to be made by the chief official of the State highway agency and submitted through the FHWA Division Administrator.

[PR 46963, Oct. 12, 1978, as amended at PR 47239, Oct. 25, 1982]

### § 640.113 Procedures.

a) Established procedures for item revisions, program actions, and record retention will not be affected by acceptance of a State certification.

b) Authorization by FHWA to proceed with work on a CA project shall be in writing in response to a request from the State highway agency.

c) If the State finds that exceptions to CA procedures or standards are appropriate on a project, such exceptions shall be brought promptly to the attention of the FHWA for consideration.

d) A project agreement shall be executed as soon as practicable after authorization on form PR-2 (Federal-Aid Project Agreement), based on the best available cost estimate. Agreement amounts shall be modified promptly on form PR-2A (Modification of Federal-Aid Project Agreement) upon the award of a contract for construction or on any other project action substantially changes total costs.

e) Reports requested by FHWA are to be furnished by the State for projects administered under CA. (See Appendix A.)

f) The FHWA shall make an inspection of each physical construction project upon its completion. The State shall notify FHWA when a project is

complete and/or ready for such inspection. Form FHWA 1446C may be used for this purpose.

(g) Final vouchers shall be submitted to the FHWA on form FHWA 1447, on which the State certifies that the plans, design, and construction for the project were in accord with the laws, regulations, directives, and standards contained in the State certification or such project exceptions as were approved by the FHWA.

(h) Revisions or amendments to State certifications will be made when necessary and processed as provided in § 640.111(c). The existing State certification is to be reviewed periodically to determine its adequacy in light of this regulation, the statutes in effect at the time of the review, and the operational reviews made by FHWA.

### § 640.115 Evaluations.

(a) Periodically, evaluations of the State's operations under CA shall be made. These evaluations shall include coverage of all areas of the State's administration of CA projects at least once every 4 years.

(b) If a failure to comply with Federal or State laws occurs and the State is unable or unwilling to effect corrective action of the deficiency, an evaluation report, together with recommendations of the regional office, shall be furnished to FHWA headquarters office for advice.

### § 640.117 Rescission.

The acceptance of a State certification may be rescinded at any time upon request of the State or if considered necessary by FHWA to protect the Federal interest. The rescission may be applied to all or part of the programs or projects covered in the State certification.

## APPENDIX A—FHWA REPORTS

[Originating in the field and in program areas that can be included under certification acceptance]

| Originating office and title                                         | Format      | Frequency | Due date | Respondents                         |
|----------------------------------------------------------------------|-------------|-----------|----------|-------------------------------------|
| Associate Administrator for Engineering and Traffic Operations (HEO) |             |           |          |                                     |
| Force Account<br>(except projects on FAS system).                    | Affirmative | Finding   | Nar..... | SA January 15, July 15..... States. |

## APPENDIX A—FHWA REPORTS—Continued

[Originating in the field and in program areas that can be included under certification acceptance]

| Originating office and title                                                                               | Format                              | Frequency | Due date                         | Response   |
|------------------------------------------------------------------------------------------------------------|-------------------------------------|-----------|----------------------------------|------------|
| HNG—Bid Price Data*                                                                                        | PR-45 .....                         | AR        | Award of contract.....           | Do.        |
| HNG—Report on Opening of Bids (except projects on FAS system).                                             | Tabulation.....                     | AR        | .....do .....                    | Do.        |
| HHO—Federal-aid Highway Construction Contractor's Semiannual Training Report.                              | FHWA-1409 .....                     | SA        | January 20, July 20 .....        | Contractor |
| HHO—Federal-aid Highway Construction Semiannual Training Report.                                           | FHWA-1410 .....                     | SA        | January 30, July 30 .....        | States.    |
| HNG—Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds*. | PR-47 .....                         | AR        | Completion of project ..         | Contractor |
| HNG—Lists of Candidate Bridges for Replacement.                                                            | Punched computer cards (5).         | AR        | As soon as possible ....         | States.    |
| HNG—Urban Railroad Demonstration Project Status.                                                           | Nar.....                            | Q         | End of quarter plus 30.          | Do.        |
| Associate Administrator for Safety (HHS)                                                                   |                                     |           |                                  |            |
| HHS—Progress and Effectiveness of Unified Safety Improvement Programs (4).                                 | Nar.....                            | A         | August 31 .....                  | Do.        |
| HHS—Progress and Effectiveness of Pavement Marking Demonstration Program.                                  | Nar with FHWA-1451 ..               | A         | September 30 .....               | Do.        |
| Associate Administrator for Right-of-Way and Environment (HRE)                                             |                                     |           |                                  |            |
| HRW—Outdoor Advertising and Junkyard Report.                                                               | FHWA-1424 .....                     | Q         | End of quarter plus 20.          | Do.        |
| Associate Administrator for Administration (HAD)                                                           |                                     |           |                                  |            |
| HFS—Accounting Statement, Accrued Unbilled Costs.                                                          | FHWA-186 .....                      | Q         | End of quarter plus 8th workday. | Do.        |
| HFS—Project Status Record.....                                                                             | PR-37 .....                         | AR        | As soon as possible ....         | Div.-Reg.  |
| Office of Chief Counsel (HCC)                                                                              |                                     |           |                                  |            |
| HCC—Semi-Annual Labor Compliance Enforcement Report.                                                       | PR-1286 to be changed to FHWA-1494. | SA        | January 10, July 10 .....        | Div.-Reg.  |

\*Except any project on FAS system, or projects on the FAP or FAU systems costing less than \$500,000.

## PART 642—SECONDARY ROAD PLAN

the development and administration of secondary road plans.

Sec.

- 642.101 Purpose.
- 642.103 Definition.
- 642.105 Policy.
- 642.107 Applicability.
- 642.109 Content.
- 642.111 Procedures.
- 642.113 Evaluations.
- 642.115 Withdrawal.

## APPENDIX A—FHWA REPORTS

AUTHORITY: 23 U.S.C. 101(e), 117(f), and 315; 49 CFR 1.48(b).

SOURCE: 43 FR 1332, Jan. 9, 1978, unless otherwise noted.

## § 642.101 Purpose.

The purpose of this regulation is to prescribe policies and procedures for

## § 642.103 Definition.

Secondary road plan. A written statement setting forth the standards and procedures adopted by the State highway agency to be used in the administration of Federal-aid projects on the Federal-aid secondary (FAS) system. It provides for certifying that all work undertaken on covered projects was in accord with the standards and procedures. (The term "secondary road plan" is hereinafter referred to as the "plan.")

## § 642.105 Policy.

(a) It is the policy of the Federal Highway Administration (FHWA)

extend to States maximum flexibility in selection of standards, procedures, and operations under the plan and to encourage maximum local involvement in selecting, developing, and constructing projects under the plan. Secondary road plans may include performance and project certification by capable local governments.

(b) The Federal Highway Administrator's responsibilities and obligations under Federal laws other than Title 23 will not be affected by approval of a State plan.

(c) Personnel of the FHWA are available to the State for consultation and advice on plan projects.

(d) All plan projects are subject to review by FHWA at any time.

#### 642.107 Applicability.

The plan shall apply to the plans, specifications, estimates, surveys, contract awards, design, inspection, and construction of projects financed with federal-aid highway funds on the federal-aid secondary (FAS) system. When other FHWA directives so provide, other projects may be administered under the provisions of an approved plan.

#### 642.109 Content.

(a) The plan shall include:

(1) An organization chart of the State highway agency and a description of the secondary road unit prescribed in 23 U.S.C. 302(a), which will administer the plan. Positions within the organization responsible for administration of plan project activities shall be identified.

(2) Operating procedures to be used in administering plan projects. These may be covered in State directives, manuals, operating guides or other issuances. Safety provisions and fiscal responsibility shall be specifically addressed in plan operating procedures. Procedures that are adequately covered in the State's submissions accepted under 23 U.S.C. 109(h) may be incorporated by reference.

(3) A statement of the design and construction standards applicable to plan projects. Design standards include noise, geometric, hydraulic, structural, and traffic control device standards; construction standards in-

clude standard plans and standard specifications covering contract, construction, and materials requirements, and

(4) A description of the State highway agency's methods for assuring local government knowledge of and compliance with State and Federal requirements on plan projects when such local governments accomplish any phase of the work.

(b) The plan and any subsequent revision shall be signed by the chief official of the State highway agency and submitted to the FHWA for approval.

[43 FR 1332, Jan. 9, 1978, as amended at 47 FR 47239, Oct. 25, 1982]

#### § 642.111 Procedures.

(a) Established procedures for system revisions, program actions and record retention will not be affected by approval of a plan.

(b) Authorization by FHWA to proceed with any phase of a plan project shall be in writing in response to a request from the State highway agency. Such authorization shall be issued only after applicable prerequisite requirements of Federal laws and implementing regulations and directives have been satisfied (e.g., NEPA, 4(f), Civil Rights, and the Uniform Act).

(c) If the State finds that exceptions to plan procedures or standards are appropriate on a project, such exceptions shall be brought promptly to the attention of the FHWA for consideration.

(d) A project agreement shall be executed on Form PR-2 (Federal-Aid Project Agreement). Contract prices shall be used in the project agreement for physical construction items.

(e) Reports requested by FHWA are to be furnished by the State for projects administered under the plan. (See Appendix A.)

(f) The FHWA shall make an inspection of each physical construction project upon its completion. The State is to notify FHWA when a project is complete and/or ready for such inspection. Form FHWA 1446 C may be used for this purpose.

(g) Final vouchers shall be submitted to the FHWA on Form FHWA 1447, on which the State certifies that

the plans, design, and construction for the project were in accord with those standards and procedures contained in the plan or such project exceptions as were approved by the FHWA.

#### § 642.113 Evaluations.

(a) Periodically, evaluations of the State's operations under the plan shall be made. These evaluations shall include coverage of all areas of the State's administration of plan projects at least once every 4 years.

(b) If a failure to comply with Federal or State laws occurs and the State is

unable or unwilling to effect corrective action of the deficiency, an evaluation report, together with recommendations of the regional office, shall be furnished to FHWA Headquarters Office for advice.

#### § 642.115 Withdrawal.

The approval of a secondary plan may be withdrawn at any time upon request of the State or if considered necessary by FHWA to protect the Federal interest. The withdrawal may be applied to all or part of the projects or responsibilities in the plan.

### APPENDIX A—FHWA REPORTS

[Originating in the field and in program areas that can be included under the Plan]

| Original office                                                             | Title                                                                     | Format                      | Frequency | Due date                 | Responsible               |
|-----------------------------------------------------------------------------|---------------------------------------------------------------------------|-----------------------------|-----------|--------------------------|---------------------------|
| <b>Associate Administrator for Engineering and Traffic Operations (HEO)</b> |                                                                           |                             |           |                          |                           |
| HHO.....                                                                    | Federal-aid highway construction contractor's semiannual training report. | FHWA-1409.....              | SA        | January 20, July 20..... | Contractors.              |
| HHO.....                                                                    | Federal-aid highway construction semiannual training report.              | FHWA-1410.....              | SA        | January 30, July 30..... | States.                   |
| HNG.....                                                                    | Lists of candidate bridges for replacement.                               | Punched computer cards (5). | AR        | ASAP.....                | Do.                       |
| <b>Associate Administrator for Safety (HSA)</b>                             |                                                                           |                             |           |                          |                           |
| HHS.....                                                                    | Progress and effectiveness of unified safety improvement programs (4).    | Nar.....                    | A         | August 31.....           | States.                   |
| HHS.....                                                                    | Progress and effectiveness of pavement marking demonstration program.     | Nar with FHWA 1451.         | A         | September 30.....        | Do.                       |
| <b>Associate Administrator for Administration (HAD)</b>                     |                                                                           |                             |           |                          |                           |
| HFS.....                                                                    | Accounting statement, accrued unbilled costs.                             | FHWA-186.....               | Q         | EOQ + 8th workday.....   | States.                   |
| HFS.....                                                                    | Project status record.....                                                | PR-37.....                  | AR        | ASAP.....                | Division-Region.          |
| <b>Office of Chief Counsel (HCC)</b>                                        |                                                                           |                             |           |                          |                           |
| HCC.....                                                                    | Semiannual labor compliance enforcement report.                           | PR-1286.....                | SA        | January 10, July 10..... | States, Division, Region. |

## PART 645—UTILITIES

### Subpart A—Utility Relocation and Adjustments

#### Sec.

- 645.101 Purpose and application.
- 645.102 Definitions.
- 645.103 Eligibility.
- 645.104 Rights-of-way.

#### Sec.

- 645.105 Preliminary engineering and engineering services.
- 645.106 Construction.
- 645.107 Agreements and authorizations.
- 645.108 Recordings of costs.
- 645.109 Reimbursement basis.
- 645.110 Labor costs.
- 645.111 Materials and supplies.
- 645.112 Equipment.
- 645.113 Transportation of employees.

Sec.

- 45.114 Utility bills.
- 45.115 Accommodation and installations.
- 45.116 Alternate procedure.

## APPENDIX—CERTIFICATION OF CONSULTANT

## Subpart B—Accommodation of Utilities

- 45.201 Purpose.
- 45.202 Policy.
- 45.203 Application.
- 45.204 Definitions.
- 45.205 General provisions.
- 45.206 Requirements.
- 45.207 Reviews and approvals.
- 45.208 State accommodation policies and procedures.
- 45.209 Use and occupancy agreements.

## APPENDIX A—APPLICATION OF JOINT DEVELOPMENT AND MULTIPLE USE CONCEPTS TO FREEWAYS AND UTILITIES

AUTHORITY: 23 U.S.C. 123; 23 U.S.C. 315; CFR 1.48(b).

SOURCE: 38 FR 29959, Oct. 31, 1973, unless otherwise noted. Redesignated at 39 FR 30, Mar. 20, 1974.

## Subpart A—Utility Relocation and Adjustments

## 45.101 Purpose and application.

(a) To prescribe the policies for the siting and relocation of utility facilities on Federal-aid highway projects and projects under the direct supervision of the Federal Highway Administration (FHWA), except Secondary Road Plan projects. It also prescribes the extent to which Federal funds may be applied to the costs incurred by or on behalf of utilities in adjustment or relocation of their facilities required by the construction of such projects. At the election of the State, an alternate procedure for simplifying the processing of utility relocations and adjustments is provided under § 645.116.

(b) The provisions of this subpart apply to reimbursement claimed by the State for costs incurred under all State or political subdivision-utility agreements, which are entered into after the date of issuance.

(c) Where lines or facilities to be relocated or adjusted by reason of the highway construction are privately owned, located on the owners' land, devoted exclusively to private use and not directly or indirectly serving the

public, the provisions of the FHWA right-of-way procedures apply.

(d) Where the utility holds a compensable interest in the land occupied by its facilities, and the relocation involves all or a substantial portion of, or extensive damage to, the utility's physical plant or operating facilities, an analysis shall be made by the State, subject to concurrence by FHWA to demonstrate whether the cost of relocation determined under the provisions of this memorandum will exceed the market value of the utility's real property determined by appraisals under FHWA directives applicable to appraisals. Any proposed settlement above the amount established by the appraisal process shall require justification as being the most feasible and economical solution available.

(e) Where State law or regulation provides payment standards more liberal than those established by this subpart the provisions of this subpart shall govern FHWA reimbursement to the State. Conversely, where State law or regulation provides more restrictive payment standards, the State standards shall govern such reimbursement. A determination shall be made by the State subject to the concurrence of FHWA as to which standards will govern, and the record documented accordingly, for each relocation encountered. In making the determination as to which standard is the most restrictive, the net cost of relocation, excluding any cost sharing arrangement between the State and the utility, shall be computed by obtaining the reimbursable amount under each of the following: (1) The State's standards and (2) the standards provided for by this subpart. Any cost sharing arrangement required by law or agreement between the State and the utility shall be applied to the lesser of the two sums so obtained to establish the amount eligible for Federal fund participation.

(f) Where the highway construction which requires the utility relocation is under the direct supervision of FHWA, all references herein to the State are inapplicable. Under such circumstances, it is intended that FHWA be considered in the relative position of the State.



(g) On Secondary Road Plan projects where Federal-aid participation is requested in the costs of utility relocations, the provisions of 23 CFR Part 642, and the approved Secondary Road Plan agreement will apply.

**§ 645.102 Definitions.**

For the purpose of this subpart, the following definitions shall apply:

(a) "Utility" shall mean and include all privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including publicly owned fire and police signal systems and street lighting systems, which directly or indirectly serve the public or any part thereof. The term "utility" shall also mean the utility company, inclusive of any wholly owned or controlled subsidiary.

(b) The terms "reimburse" and "participate," or their derivatives, shall mean that Federal funds may be used to reimburse the State on Federal-aid projects, or to make payments to the utility on projects under the direct supervision of FHWA to the extent provided by applicable law.

(c) "Replacement rights-of-way" shall mean the land and interests in land acquired for or by the utility as necessitated by the highway construction.

(d) "Preliminary engineering" shall mean locating, making of surveys, preparation of plans, specifications, and estimates and other related preparatory work in advance of construction operations.

(e) "Construction" shall mean the actual building and all related work including utility relocation or adjustments, incidental to the construction or reconstruction of a highway project, except for preliminary engineering or right-of-way work which is programed and authorized as a separate phase of work.

(f) "Salvage value" is the amount received for utility property removed, if sold; or if retained for reuse, the amount at which the material recovered

is charged to the utility's accounts.

(g) "Work order system" is a procedure for accumulating and recording into separate accounts of a utility costs to the utility in connection with any change in its system or plant.

(h) "Program approval" shall mean approval by FHWA of programs for projects proposed by the State. Projects involve preliminary engineering, rights-of-way acquisition or construction at specific locations.

(i) "Authorization" shall mean authorization to the State by the Division Engineer to proceed with a phase of a project previously or currently given program approval. The date of authorization establishes the date of eligibility for Federal funds to participate in the costs incurred during that phase of work.

(j) "Relocation" shall mean the adjustment of utility facilities required by the highway project, such as moving and reinstalling the facility including necessary rights-of-way at new location, moving or rearranging existing facilities or changing the location of facility, including any necessary safety and protective measures. It shall also mean constructing a replacement facility functionally equal to existing facility, where necessary for continuous operation of the utility service, the project economy, or the convenience of highway construction.

(k) "Cost of removal" is the cost of demolishing, dismantling, removing, or otherwise disposing of utility property and cleaning up required to leave the site in a neat and presentable condition.

(l) "Cost of salvage" is the amount expended to restore salvaged utility property to usable condition after removal.

(m) "Overhead costs" shall mean those costs not chargeable directly to accounts pertaining to the relocation which are determined on the basis of a rate or percentum factor supported by overhead clearing accounts, or by other means as will provide an equitable allocation of actual and reasonable overhead costs to specific relocation jobs. Such costs may include expenses for general engineering and supervision, general office services, legal services,

es, insurance, relief, pensions, taxes and construction engineering and supervision by other than the accounting utility.

(n) "Betterments" shall mean and include any upgrading to the facility being relocated made solely for the benefit of and at the election of the utility, not attributable to the highway construction.

(o) "The cost of any improvements necessitated by or in accommodation of the highway construction" shall mean the cost of providing improvements in the relocated or adjusted facility that are needed to protect or accommodate the highway and its safe operation.

### § 645.103 Eligibility.

(a) Federal funds may participate, at pro rata share applicable, in an amount actually paid by a State, or a political subdivision thereof, for the cost of utility relocations under one or more of the following conditions:

(1) Where the utility has the right of occupancy in its existing location by reason of holding the fee, an easement over other real property interest, the encroachment or taking of which is compensable in eminent domain.

(2) Where the utility occupies either publicly or privately owned land or public right-of-way, and the State's payment of the costs of relocation is made pursuant to State law and does not violate a legal contract between the utility and the State, provided an affirmative finding has been made by FHWA that such a law forms a suitable basis for Federal-aid fund participation under the provisions of 23 U.S.C. 123.

(3) Where the utility which occupies publicly owned lands or public right-of-way is owned by an agency or political subdivision of a State, and said agency or political subdivision is not required by law or agreement to relocate its facilities at its own expense, provided the State has furnished a payment to FHWA establishing and/or recognizing its legal authority or obligation to make such payments, and an affirmative finding has been made by FHWA that such a statement forms a suitable basis for Federal-aid fund participation under the provisions of 23

U.S.C. 123. This statement should reflect the basis of the State's payment Statewide except where conditions otherwise limit its application to political subdivisions, projects or individual relocations.

(b) Where a State enacts a new utility relocation statute or amends an existing statute and requests reimbursement pursuant to the provisions of paragraph (a)(2) or (3) of this section, the State shall furnish FHWA copies of the statute, along with a statement reflecting the difference, if any, between the utility relocation payment standards under State law and those established by this subpart. FHWA may conditionally authorize utility relocations subject to an affirmative finding by FHWA that the State's submission forms a suitable basis for reimbursement under 23 U.S.C. 123. Should at any time the utility relocation statute become a matter of litigation, the State shall so inform FHWA.

(c) Federal funds may not participate in payments made by a political subdivision for relocation of utility facilities where State law prohibits a State from making payment for relocation of utility facilities.

(d) Where the basis of the State's payment of the cost of relocation is made pursuant to the conditions under § 645.103(a)(1), the State shall obtain and have on record suitable evidence of the utility's title to a compensable real property interest. Where the utility's property interest is not a matter of public or private record an affirmative finding by the State's legal counsel of the utility's compensable interest shall be incorporated as part of the State's records. Cases involving the relocation of utilities occupying Federal lands are to be submitted to FHWA for review in accordance with the provisions of § 645.107(l).

(e) Where the advance installation of new utility facilities, crossing or otherwise occupying the proposed right-of-way of a future planned highway project, is either underway, or scheduled to be underway, prior to the time such right-of-way is purchased by or under control of the State, arrangements should be made for such facilities to be installed in a manner that will meet the requirements of the

future planned highway project. Federal funds are eligible to participate in the additional costs incurred by the utility that are attributable to and in accommodation of the planned highway project, provided such costs are incurred subsequent to authorization of the work by the FHWA. Subject to the other provisions of this subpart, reimbursement may be approved under the foregoing circumstances when it is demonstrated that the action taken is necessary to protect the public interest, and the adjustment of the facility is necessary by reason of the actual construction of the planned highway project.

**§ 645.104 Rights-of-way.**

(a) Reimbursement may be approved for the cost of replacement right-of-way incurred after the date the work is included in an approved program and replacement right-of-way for utilities is authorized by FHWA: *Provided*, That,

(1) The State's payment does not violate the law of the State or violate a legal contract between the utility and State; and

(2) There will be no charge to the project for that portion of the utility's existing right-of-way being transferred to the State for highway purposes; and

(3) The utility has the right of occupancy in its existing location by reason of holding the fee, an easement or other real property interest, the damaging or taking of which is compensable in eminent domain, or the acquisition is made in the interest of project economy or is necessary to meet the requirements of the highway project.

(b) Expenses incurred by the utility incident to the acquisition of replacement rights-of-way may be reimbursed. These expenses may include such items as: Salaries and expenses of utility employees while engaged in the appraisal of and negotiation for such right-of-way, amounts paid independent appraisers for appraisals made of such right-of-way, recording costs, deed fees, and similar costs normally paid incident to land acquisition.

(c) The utility shall determine and record its valuation of the replacement rights-of-way that it acquires,

prior to negotiation for its acquisition. This means the utility should, by record be in a position to justify amounts paid for such right-of-way. The valuation may consist of appraisals by utility employees or by independent appraisers. Sound valuation and acquisition practices should be followed by the utility.

(d) Acquisitions of rights-of-way of the State for a utility shall be in accordance with FHWA directives applicable to right-of-way acquisition.

(e) Where the utility has the right of occupancy in its existing location by reason of holding the fee, an easement or other real property interest, and is not necessary by reason of the highway construction to adjust or relocate the facilities located thereon, the taking and damage of the utility's property, including the disposal or removal of such facilities, is a matter for consideration as a right-of-way transaction in accordance with FHWA directives applicable to right-of-way acquisition.

(f) Where a utility company has a compensable property interest in land to be acquired for a scenic strip, look, rest area, or recreation area, the State is to take steps necessary to protect and preserve the area or being acquired. This will require termination by the State whether the retention of the utility at its existing location, will now or later adversely affect the appearance of the land being acquired, and whether it is necessary to subordinate or adjust the utility's interests therein, or to arrange, screen, or relocate the utility's facilities thereon, or both. Where the adjustment or relocation of utility facilities is necessary, the provisions of this subpart apply. In such cases the State shall determine, subject to concurrence by FHWA, whether the added cost of acquisition attributable to the utility's property interest outweighs the aesthetic values to be received.

**§ 645.105 Preliminary engineering and engineering services.**

(a) Reimbursement may be approved for such costs incurred for preliminary

engineering work after the date the work is included in an approved program, and preliminary engineering for utilities is authorized by FHWA.

(b) Where a utility is not adequately staffed to prosecute the relocation, Federal funds may participate in the amounts paid to engineers, architects, and others for required engineering and allied services, provided such amounts are not based on a percentage of the cost of relocation. Where reimbursement is requested by the utility for the cost of such services, the utility and its consultant shall agree in writing as to the services to be provided and the fees and arrangements therefor. Federal-aid funds may participate in the cost of such services performed under existing written continuing contracts where it is demonstrated that such work is regularly performed for the utility in its own work under such contracts at reasonable costs. The proposed use of such services, fees, and arrangements therefor are subject to prior approval by FHWA, except as provided below:

(1) Where the proposed utility work is relatively simple, and the fees for proposed engineering services are less than \$5,000, and the FHWA has previously approved a satisfactory statement of procedures the State uses to provide for such matters.

(2) Where the engineering services performed under existing written continuing contracts for fees of \$5,000 or less, and it is demonstrated that this work is regularly performed for the utility in its own work under such contracts at reasonable costs.

(3) All agreements for the engineering services outlined in § 645.105(b) and (c), in which Federal-aid funds are to participate, shall include a certificate, as a supplement to said agreement, as shown in appendix to this part. The certificate shall be executed by the individual so engaged, or the principal officer of the firm referred to.

#### § 645.106 Construction.

(a) Construction costs incurred by a utility subsequent to the date on which the FHWA authorized the State to proceed with the relocation may be reimbursed. Federal funds will not

participate in any utility relocation (1) not necessitated by the construction of the highway project or (2) for changes made solely for the benefit or convenience of a utility, its contractor, or a highway contractor.

(b) Unless the utility work is made a part of the State's highway construction contract or performed under a separate contract let by the State, as agreed to by the utility and the State with the approval of the FHWA, all utility relocations and all work incidental to such relocation shall be performed by the utility with its own forces, or by a contractor paid under a contract let by the utility, or both. When the contractual method is utilized, pursuant to applicable State law or regulation, Federal funds may participate in the cost of the relocation, where it is demonstrated that the letting of a contract by the State was in the best interest of the State, or that the letting of contract by the utility was necessary because the utility was not adequately staffed or equipped to perform the work with its own forces at the time of relocation.

(c) Where reimbursement is to be requested, any contract to perform work in connection with the utility relocation should be under an award to the lowest qualified bidder who submitted a proposal in conformity with the requirements and specifications for the work to be performed, as set forth in an appropriate solicitation for bids, except as set forth in § 645.106(d) and (e). Appropriate solicitation shall be accomplished through open advertising in publications, or by circularizing to a list of prequalified contractors or known qualified contractors.

(d) Federal funds may participate in the costs of relocation work performed under existing written continuing contracts where it is demonstrated that such work is regularly performed for the utility under such contracts at reasonable costs. This may include existing continuing contracts with another utility. Where such other utility has an ownership interest in the facility to be relocated, Federal funds will not be eligible to participate in intercompany profits.

(e) Where the utility proposes to contract outside the requirements

under § 645.106(c) and (d) for work of relatively minor cost or nature, for example, tree trimming and the like, Federal funds may participate in the costs so incurred, provided it is demonstrated that such requirements are impractical and the utility's action did not result in an expenditure in excess of that justified by the prevailing conditions.

(f) All labor, materials, equipment, and other services furnished by the utility shall be billed by the utility direct to the State. The special provisions of contracts let by the utility or the State shall be explicit in this respect. The costs of force account work performed for the utility by the State and of contract work performed for the utility under a contract let by the State, shall be reported separately from the costs of other force account and contract items on the highway project.

(g) Field verification by the State, to justify and support payment for the work done, is necessary to the proper handling of utility relocations and adjustments. A minimum treatment is the procedure outlined under "Utility Adjustments" in the AASHTO publication, "Construction Manual for Highway Construction," or any other equally acceptable written procedure mutually agreed upon by a State and the FHWA to accomplish the purpose. The cost of preparing as-built plans, to the extent necessary for the State to verify costs, and/or for highway maintenance purposes, is reimbursable.

#### § 645.107 Agreements and authorizations.

(a) Except as provided in paragraph (q) of this section where reimbursement is requested by the State, the utility and the State shall agree in writing on their separate responsibilities in financing and accomplishing the relocation work, either through the use of master agreements for relocation work to be encountered on an areawide or statewide basis, or through the use of individual agreements on a case-by-case or project basis, or both. The form of the written agreement is not prescribed. Said agreement shall incorporate this subpart and any supplements and revisions thereto by reference, and by in-

clusion therein or by supplement thereto shall, for each relocation countered, set forth:

(1) The basis of the State's authority, obligation, or liability to pay the relocation (reference § 645.103).

(2) The scope, description, and location of the work to be undertaken.

(3) The method to be used by utility for developing relocation (reference § 645.107(h)).

(4) The method to be used for forming the relocation work, either the utility's forces or by contract.

(5) That the facilities to be relocated to a position within the highway right-of-way will be accommodated in accordance with the provisions of 23 CFR Part 645, Subpart B.

(b) The agreement shall be supported by plans, specifications when required, and estimates of the work agreed upon, which shall be sufficiently informative and complete to permit the State and FHWA with a showing of work required in accordance with paragraphs (i) and (j) of this section.

(c) FHWA shall indicate approval of the written agreement by endorsement thereon. Such approval and conditions or qualifications attached thereto are for the purpose of indicating the State of the extent that Federal funds are eligible to participate in the costs incurred under the applicable agreement, subject to the provisions of this subpart.

(d) Where applicable, the written agreement shall set out by separate clause the terms and amounts of contribution made or to be made by the utility to the State in connection with payments by the State to the utility under the provisions of § 645.103. Federal funds are not eligible to participate in any costs which the utility repays a State or political subdivision for the State's rata share, or portions thereof, of the cost of relocation.

(e) In cases involving the installation of highway lighting, traffic signals, water, electric power and similar facilities that are to serve a highway purpose, and where under established practice in a locality the ownership of such facilities is to remain with a utility company rather than the State or

political subdivision, Federal-aid highway funds may participate in the cost of constructing such facilities for public highway purposes when found to be in the public interest by FHWA, provided assurances are made in the rate-utility agreement that the utility will:

(1) Adequately maintain such facilities and provide continuous quality service;

(2) Record the cost of such facilities as a contribution by the State and maintain related accounting records in accordance with applicable provisions of the *Uniform System of Accounts* prescribed by the Federal Power Commission—esp., Account 271—Contributions in Aid of Construction, its equivalent or its successor;

(3) Eliminate from the rate determination process (i) the original cost to the State of all such facilities and (ii) the corresponding current and cumulative depreciation amounts; and

(4) Relinquish ownership and possession of all such facilities to the State should the utility either go out of business or be sold to another company unwilling to abide by the terms of the agreement.

Where a publicly owned utility is involved paragraph (e)(2) and (3) of this section may be modified as appropriate to reflect current accounting and rate determination practices used by the utility.

(f) Where the relocation involves work to be paid by the State and work to be done at the expense of the utility, and reimbursement is requested by the State, the written agreement shall state the share to be borne by each party; that is, by the State and by the utility. Reimbursement shall follow the basis of cost allocation set out in the agreement, except where adjustment is required by changes between the work planned and accomplished.

(g) In the event there are changes in the scope of work, extra work, or major changes in the planned work covered by the approved agreement, plans and estimates, reimbursement therefor shall be limited to costs covered by a modification of the agreement, or a written change or extra work order, approved by the State and FHWA. Emergency situations may be

processed in the manner prescribed by paragraph (o) of this section.

(h) Agreements shall set forth the method of developing the relocation costs which shall be one of the following alternatives:

(1) Actual direct and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.

(2) Actual direct and related indirect costs accumulated in accordance with an established accounting procedure developed by the utility and approved by the State and FHWA. Where such a procedure is proposed by a utility, approval by FHWA will be limited to an accounting procedure which the utility uses in its regular operations.

**NOTE:** The use of unit costs, such as broad gauge units of property, where the utility maintains and regularly uses such unit costs in its own operations will be considered as meeting the requirements under § 645.107(h) and (1) and (2) above, provided that such unit costs and supporting records are representative of the actual direct and related indirect costs, accumulated under the accounting procedure prescribed by the regulatory body having jurisdiction over the utility or the accounting procedure approved by the State and FHWA.

(3) An agreed lump sum where the estimated cost to the State of the proposed adjustment does not exceed \$25,000 and the utility's cost estimate and method of estimating, including the use of unit costs, such as broad gauge units of property, where used by the utility in its own work are determined adequate to support the lump sum method. The lump sum agreement shall be supported by a plan prepared in accordance with § 645.107(j); specifications where required, and a detailed cost estimate prepared in a manner that will permit comparison with the agreement and supporting plans, which will give the State and FHWA a clear understanding of the work proposed. The agreement shall be subject to the prior approval of the State and FHWA. Except where unit costs are used and approved, the estimate shall show such details as man-hours by class and rate; equipment charges by type, size, and rate; materials and supplies by items and price;

and payroll additives and other overhead factors, with a statement of what is included in each, and the basis for determining the percentage used. Where determining whether the cost of relocation falls within the ceiling for lump sum utility agreements, it is not necessary to reflect the estimated costs of utility work not attributable to the highway construction or not eligible for Federal fund participation.

(4) Where work is to be performed by forces of a utility, the nature of whose regular business is such that its accounting system is not designed or required to classify, record, and otherwise reflect the results of operation on a continuing basis in terms of physical work items, the estimate of cost shall include reference to the support to be presented with the claim for reimbursement, and maintained by the utility for subsequent review. The claim for reimbursement shall be accompanied by a duly certified post-construction compilation of cost, showing such details as man-hours by class and rate; equipment by types, size, and rate; materials and supplies by items and price. Upon review of claims as herein contemplated and as otherwise required, the State and FHWA shall make such determinations as are appropriate in the circumstances, including any necessity for audit at the site of the utility.

(1) The estimate in support of the agreement shall set forth the items of work to be performed, broken down as to estimated cost of labor, construction overhead, materials and supplies, handling charges, transportation and equipment, rights-of-way, preliminary engineering, and construction engineering, including an itemization of appropriate credits for salvage, betterments, and expired service life, all in sufficient detail to provide a reasonable basis for analysis. The factors that will be included in the utility's construction overhead account shall be set forth. Materials are to be itemized where they represent relatively major components or cost in the relocation. Unit costs, such as broad gauge units of property, may be used for estimating purposes where the utility uses such units in its own operations.

(1) The supporting plans or drawings for the utility relocation shall be sufficiently informative to provide a clear picture of the work to be done and shall show:

(1) The location, length, size and capacity, type, class, and pertinent operating conditions and design features of existing, proposed, and temporary facilities, including proposed changes thereto, and disposition thereof, all appropriate nomenclature, symbol legend, notes, color coding or the like.

(2) The project number, plan sheet and date, the horizontal and, where appropriate, the vertical location of the utility facilities in relation to highway alignment, geometric features, stationing, grades, structures and other facilities, proposed and existing right-of-way lines, and where applicable, the access control lines;

(3) Where applicable, the limits of right-of-way to be acquired from, or on behalf of the utility; and

(4) By appropriate notes or symbols that portion of the work to be accomplished, if any, at the sole expense of the utility.

(j) On projects where the State plans to request reimbursement of utility relocation costs, it is necessary to show under the character of work on Form PR-1 that "utility relocations" are included. The utility work may be programmed either as part of the right-of-way acquisition phase, the construction phase of the highway project, or as a separate utility relocation project. Where feasible, arrangements should be made to program phases of the utility work under a single project.

(k) Where reimbursement is required, except as otherwise provided in § 645.107(l), (m), and (n), authorization by the FHWA to the State to proceed with the physical adjustment and relocation of a utility's facilities must be given:

(1) On or after the date the utility relocation is included in an approved program.

(2) After the public hearing has been held or location and design approved has been given for this highway project, and

(3) At such time as the Division Administrator is furnished and reviewed

plans and estimates reporting adequately the utility work proposed, the location of the highway project, and the utility relocation, and

(4) When the Division Administrator furnished and reviews the proposed executed agreement between the State and the utility, and

(5) When the Division Administrator furnished a schedule for accomplishing the utility work based on the best information available at the time authorization is requested.

(b) In cases where the utility to be located occupies Federal lands, FHWA shall not issue authorization to proceed until the State has submitted a statement signed by a responsible highway official citing the legal basis which establishes the utility's compensable property interest in such lands, exceptional circumstances, and for each cause shown by the State, FHWA may waive the requirement of submission of the above statement as a condition precedent to authorization to proceed. Such submittal, however, shall in instances be a condition precedent to Federal reimbursement.

(c) FHWA may authorize the physical relocation or adjustment of utility facilities before a public hearing or location and design approval, under the following conditions:

(1) Where the utility facilities to be located or adjusted occupy, in part or whole, any rights-of-way authorized by FHWA prior to a public hearing or location/design approval, pursuant to 23 CFR Part 790.

(2) Any relocation or adjustment of utility facilities meeting the requirements of § 645.103(e).

(3) Where mutually agreed to by the State and FHWA, arrangements may be made for advance conditional authorization of utility relocation work before the time of program approval or, provided the actual physical adjustment or relocation of any utility facilities will not be undertaken until, unless, the FHWA is furnished with an approved agreement for each relocation, the proposed or executed agreement between the State and the utility, including the supporting plans and estimates therefor. The cost of replacement right-of-way so acquired and actually incorporated in the finally approved

utility relocation will be eligible for Federal participation.

(d) Where unforeseen circumstances during construction of the highway project necessitate adjustment or relocation of utility facilities, oral arrangements therefor can, and should, be made promptly by the State with FHWA. Where necessary to prevent undue delay or interference with the highway construction, FHWA may establish a date of eligibility for such work and authorize the State to proceed subject to subsequent review and approval of a satisfactory State utility agreement.

(e) Federal funds may not reimburse the State for costs of utility relocations:

(1) Until and unless the FHWA approves the executed agreement between the State and the utility (except as provided in § 645.107(9)), and

(2) Until and unless a project agreement which includes the work is executed, and

(3) Which are not required by the finally approved project location and highway construction plans.

(f) Where all efforts of the State and the utility fail to bring about written agreement of their separate responsibilities under the provisions of this memorandum, the State shall submit its proposal and a full report of the circumstances to FHWA.

(1) Conditional authorization for the work to proceed may be given to the State, with the understanding that Federal funds will not be paid for work done by the utility, until FHWA has given his approval to the State's proposal.

(2) FHWA will consider for approval any special procedure under State law, or appropriate administrative or judicial order, or under blanket master agreements with the utilities, that will fully accomplish all of the foregoing objectives, and accelerate the advancement of the construction and completion of projects.

[38 FR 29959, Oct. 31, 1973, as amended at 47 FR 1948, Jan. 17, 1983]

#### § 645.108 Recordings of costs.

(a) All utility relocations will be recorded by means of work orders or job



orders, except as otherwise approved under § 645.107(h)(2), (3), and (4).

(b) Where the relocation costs are to be developed pursuant to the methods outlined in § 645.107(h)(1) or (2), the individual and total costs properly reported and recorded in the utility's accounts, in accordance with the approved method for developing such costs, shall constitute the maximum amount on which Federal fund participation may be based for the work performed under the approved utility agreement. Separate work orders may be issued for additions and retirements, or the retirements may be included with the construction work order: *Provided, however*, That all items relating to retirements shall be kept distinctly separate from those relating to construction.

(c) Each utility shall keep its work order system in such manner as to show the nature of each addition to, or retirement from a facility, the total cost thereof, and the source or sources of cost.

(d) The provisions of §§ 645.110, 645.111, 645.112, and 645.113 are intended for use in the development of reimbursable costs. It is further intended that cost development under prescribed or approved systems of accounts shall be the general controlling factor.

#### § 645.109 Reimbursement basis.

(a) Where payment by the State for the costs of relocation is made pursuant to the provisions of § 645.103 of this subpart, and such payment is for the entire amount paid by, or on behalf of, the utility properly attributable to the relocation, after deducting therefrom any increase in the value of the new facility, and any salvage value derived from the old facility, reimbursement of such costs may be approved, subject to the following understandings:

(1) "The entire amount paid by or on behalf of the utility properly attributable to the relocation" shall mean the cost of adjusting or rearranging the existing facility, or providing a replacement facility functionally equal to the facility, or portion thereof, being replaced, including the cost of any additions, improvements, re-

movals, or replacement right-of-necessitated by, or in accommodation of, the highway project.

(2) The deduction for "any increase in value of the new facility" shall include a credit to the project for cost of:

(i) Any betterments in the facility being replaced or adjusted, and

(ii) Where appropriate, any increase in value attributable to the substitution of a replacement facility for an existing facility, as determined in accordance with the provisions of § 645.109(b).

(3) The deduction for "any salvage value derived from the old facility" shall include a credit to the highway project for the value of the material removed, as determined in accordance with the provisions of § 645.111(b)(c) of this subpart.

(b) In any instance where the relocation involves the substitution of a replacement facility for an existing facility, a determination shall be made whether a credit is due to the project for the value of the expired service life of the facility being replaced, as provided in § 645.109(b)(1). The credit shall take into account the effect of such factors as wear and action of the elements, and functional or economic obsolescence of the existing facility, not restored by maintenance during the years prior to the location.

(1) A credit to the project for value of the expired service life of a facility being replaced will not be required where such facility involves only:

(i) Utility line crossings of the highway, or

(ii) Segments of a utility line, other than utility line crossings of the highway, less than 1 mile in length: *Provided*, the replacement facility is such a segment is not of greater functional capacity or capability than the one it replaces, and includes no betterments.

(2) The following shall constitute prima facie evidence that a credit is due to the project for the value of the expired service life of the facility being replaced:

(i) Where the replacement facility is functionally equal to the existing

ility which it replaces, and such existing facility involves a segment of a utility line 1 mile or more in length.

(ii) Where the replacement facility is other than a segment of the utility's service, distribution, or transmission lines, such as a building, pumping station, filtration plant, power plant, or substation, production, or transfer or storage facilities, and any other similar operating units of a utility's physical plant or operating facilities.

(iii) Where the replacement facility involves betterments, or is of greater functional capacity or capability than the one it replaces, except for utility crossings of the highway as provided in § 645.109(b)(1)(i).

(3) Where an affirmative finding is made that a credit for the value of extended service life is due to the project, the credit to be given shall be in an amount bearing the same proportion to the original cost of the facility being replaced as its existing age bears to its estimated total life expectancy.

(4) "The estimated total life expectancy" is the sum of the period of actual use and the period of expectant remaining service life. The period of expectant remaining life may be taken from the utility's records, established through the use of age-life curves, or determined by the interested parties through field inspections, giving due consideration to the quality and frequency of maintenance.

(5) Where original costs are not ascertainable from the utility's accounts or records, they may be estimated by finding back present day costs.

(6) The burden of proof of any exceptions to the foregoing requirements shall be with the utility company and will require written explanation to demonstrate that the replacement facility will not remain in useful service for a longer period than the existing facility could have remained in service, had the replacement not been made, and the reasons therefor.

(7) Exceptions claimed on the basis of predicted functional obsolescence of the replacement facility must be substantiated by formal and planned utility work programs, schedules, or equally suitable documentation, and the utility must satisfactorily demonstrate and justify the reasons why the

planned replacement and expansion cannot be accomplished at the time of the highway-utility relocation. Exceptions claimed on the basis of predicted economic obsolescence of the replacement facility must also be substantiated by suitable documentation. Where such exceptions are satisfactorily substantiated, an analysis shall be made to determine any increase in value to the utility resulting from the predicted early retirement and salvage of the replacement facility.

(8) The credit to be obtained for expired service life shall be determined jointly by the utility company and the State, and shall be set forth in the detailed estimate supporting the agreement between the utility and the State.

(c) Additional costs incurred by a utility resulting from complying with governmental or industry codes, or current design practices regularly followed by the utility in its own work may be reimbursed provided either of the following conditions are satisfied:

(1) There is a direct benefit to the highway project; for example, improved appearance, increased highway safety, or added protection.

(2) Compliance with such codes or practices is required under Federal, State, or local governing laws and ordinances.

(d) Except as provided for under § 645.109(c) of this subpart, where the utility elects to install, or it is current practice in the utility's own operations to install, facilities of a type different than the facilities being replaced, such as the substitution of ACSR for copper conductors, underground cables for aerial lines and the like, reimbursement shall be limited to the cost of providing the most economical replacement facility, or restoration of service, functionally equal to the one being replaced.

(e) Where an addition to an existing facility is required by the highway construction, such as an increase in the length of a relocated utility line, the actual costs of the addition are reimbursable to the extent the materials in the addition are not of a type or a class superior to the materials in the facility to which the addition is extended, except that the cost of any im-

provement in type or class which is required in connection with the construction of the project is reimbursable.

(f) Where necessitated by the highway project, Federal funds are eligible to participate in the cost incurred for rehabilitating, moving, or replacing buildings of a utility company, including the equipment and operating facilities therein, which are used for the production, transmission, or distribution of the utility's products. Except where it is demonstrated that the existing building and/or facilities are required to remain in place and in service until a (new) replacement building and/or facilities are constructed and in service at a new location, an analysis shall be made by the State to determine the cost and feasibility of each of the following:

(1) To rehabilitate the building at its existing location.

(2) To move it as a unit intact to its new location.

(3) To dismantle it and reassemble or reconstruct it at its new location, or

(4) To replace it with a new building at the new location.

Reimbursement may be approved for the costs incurred under the most feasible and economical solution available, less appropriate credits for salvage and betterments. Where a (new) replacement building and/or (new) equipment or facilities therein are constructed, credit will also be given to the project in accordance with § 645.109(b).

(g) In no event will the total of all credits required under the provisions of this memorandum exceed the total costs of adjustment, exclusive of the cost of improvements necessitated by the highway construction.

#### § 645.110 Labor costs.

(a) Salaries and wages billed at actual rates or at average rates accounting for productive labor hours, retroactive pay adjustments, and expenses paid by a utility to individuals during the periods of time they are engaged in the utility relocations are reimbursable when supported by adequate records, except for engineering or inspection charges which are being reimbursed under the utility's con-

struction overhead account. Costs the utility of vacation, holiday pay, company sponsored benefits, and similar costs incident to labor employment, will be reimbursed when supported by adequate records. They may include individuals who are engaged in the direct and immediate supervision of the work at the site of project and in the actual preparation of the plans and estimates of the relocation.

(b) Overhead construction costs:

(1) So that each relocation shall bear its equitable proportion of such costs, all overhead construction costs not chargeable directly to work or construction accounts such as, general engineering and supervision, general office salaries and expenses, construction engineering and supervision by other than the accounting utility legal expense, insurance, relief pensions and taxes shall be charged the relocation on the basis of amount of such overhead costs reasonably applicable thereto. These portions shall not be interpreted as permitting the addition to utility accounts of arbitrary percentages, amounts to cover assumed overhead costs, but as accepting assignment the relocation of actual and reasonable overhead costs.

(2) The cost of advertising and promotion, interest on borrowed funds or charges for the utility's own funds when so used, resource planning, research programs, stock and shareholder's expenses and similar costs, not considered as necessary and incident to the performance of the relocation and are not eligible for Federal participation.

(3) Premiums paid to an insurance company for Workmen's Compensation, Public Liability and Property Damage Insurance will be reimbursed where, and to the extent, it is determined that, the amounts of the premiums are the products of the proper rates applied to the amounts of salaries and wages, exclusive of vacation pay or allowances.

(4) Where it has been the policy of the utility to self-insure against public liability and property damage claims, reimbursement will be at the rate developed by the utility, or in the ab-

ence thereof, at a rate not in excess of 1 percent of salaries and wages charged to the job.

(5) The records supporting the entries for overhead costs shall be so kept as to show the total amount, rate, and allocation basis of each additive, and be subject to audit by representatives of the State and Federal Government.

#### § 645.111 Materials and supplies.

(a) *Cost.* Materials and supplies shall be billed at inventory prices when furnished from the utility's stocks, and at actual cost to the utility when the materials and supplies are not available in the utility stocks and must be purchased for the relocation. The costs of handling at stores or at material yards, the costs of purchasing, the costs of inspection and testing, and charge for general overhead expenses are provided for under § 645.111(d). When not so allocated in the utility's overhead accounts, they shall be included in the computation of the prices of materials or supplies. In the computation of costs of materials and supplies shall include the deduction of all offered discounts, rebates, advances, and intercompany profits. Those instances where the book value does not represent the true value of used materials, they shall be charged to the project at the same value used by the utility in its own books, but in no event shall they be charged at more than the value determined in accordance with the foregoing provisions of this section.

(b) *Materials recovered from permanent facility.* (1) Materials recovered in suitable condition for reuse by the utility, in connection with construction or retirement of property, shall be credited to the cost of the project at current stock prices; or if a utility charges recovered material to the material and supply account at original cost or a percentum of current price value, and the utility follows a consistent practice in this regard, the work order shall receive credit accordingly. The foregoing shall not preclude any additional credits when such credits are required by State law or regulations.

(2) The State and FHWA shall have the right to inspect recovered materials prior to disposal by sale or scrap. This requirement will be satisfied by the utility giving written notice, or oral notice with later written confirmation, to the State of the time and place the materials will be available for inspection. This notice is the responsibility of the utility, and it may be held accountable for full value of materials disposed of without notice.

(3) If recovered materials are not suitable for reuse by the utility, they shall be disposed of as outlined in § 645.111 (c)(2).

(4) Where the (new) replacement facility includes materials of a type different than the materials being replaced, such as, aluminum for copper and the like, the credit for the materials recovered from the existing facility shall not exceed whichever is the greater of the following amounts: (i) The original cost of the existing material, or (ii) the current cost of the replacement materials.

(c) *Materials recovered from temporary use.* (1) Materials recovered from temporary use in connection with a highway project, which are in suitable condition for reuse by the utility, shall be credited to the cost of the project at stock prices charged to the job, less ten (10) percent for loss in service life. The State and FHWA shall have the right to inspect all recovered materials not reusable by the utility. Notice shall be given as provided by § 645.111(b)(2).

(2) Items of materials recovered from temporary use which are unsuitable for reuse by the utility, and which have been determined to have a sale value, shall either be sold, following an appropriate solicitation for bids, to the highest bidder, or if the utility regularly practices a system of disposal by sale which has been determined to be the most advantageous to the utility, credit shall be at the going prices for such used or scrap material as are supported by the records of the utility. The proceeds of the sale shall be credited to the cost of the project. The sale shall be conducted by the utility or at its request, by the State. In no event shall the State or the com-

pany be considered as an acceptable bidder for such material.

(d) The cost of salvage shall not exceed the value of the recovered material, which value shall be determined as provided in § 645.111 (b) and (c).

(e) The cost of moving recovered materials from the job site to stores or storage point nearest the job will be reimbursed, subject to the provisions of § 645.111(f).

(f) Reimbursement of removal costs, as reduced by the salvage value of materials removed, may be approved subject to the following conditions:

(1) Where the existing facilities are being replaced by reason of the highway construction: *Provided,*

(i) Such removal is necessary to accommodate the highway project, or

(ii) The existing facilities cannot be abandoned in place, or

(iii) Where it is demonstrated that the estimated salvage value of the materials to be removed will equal, or exceed, the total cost of removal, taking into account all related charges for reconditioning, handling, and transporting the materials to be removed.

(2) Except as otherwise provided under § 645.104(e), where the existing facilities are not being replaced by reason of the highway construction: *Provided,*

(i) Removal is necessary to accommodate the highway project,

(ii) The State has authority to pay the removal costs,

(iii) The utility is not obligated by law, ordinance, regulation, franchise, written agreement, or legal contract to remove its facilities at its own expense, and,

(iv) A credit is given to the project for the salvage value of the materials removed, not to exceed the cost of removal and related charges.

(g) Where removal of the existing facilities is necessary by reason of the highway construction, but the materials to be removed are not suitable for reuse by the utility, or their recovery is not economical, the State shall determine, subject to concurrence by the FHWA, which is the most desirable and economical method of removal to employ; either by the utility or its contractor, or by the highway contractor,

or by a separate clearing contract by the State.

(h) Where, pending their subsequent removal or abandonment, utility lines must be deactivated and rendered harmless as a necessary safety and protective measure to the public highway project; either by capping, plugging, or by otherwise altering such lines, Federal funds may participate in payments so made by the State, exclusive of removal costs: *Provided, That*

(1) The work is necessitated by highway project, and

(2) The State has authority to such costs, and

(3) The utility is not obligated by law, ordinance, regulation, franchise, written agreement, or legal contract to do the work at its own expense, or

(4) The work is a necessary and incidental expense to the costs of relocation and/or removal which are eligible for Federal fund participation under the provisions of §§ 645.103 and 645.111(f) of this subpart.

(i) The costs of supervision, labor, and expenses incurred in the operation and maintenance of the storerooms and material yards, including storage, handling, and distribution of materials and supplies, the costs of purchasing, and the costs of testing and inspection, are reimbursable. Costs determined by a rate, or of equitable method of distribution which is representative of the cost of the utility, may be reimbursed.

#### § 645.112 Equipment.

(a) *Accumulation of costs.* Accounts for transportation and heavy equipment are used for the purpose of accumulating expense and distributing them to the accounts properly chargeable with the services. Among the items of expense clearing through these accounts are the following: Depreciation; fuel and lubricants for vehicles (including sales and excise taxes thereon); freight and express on fuel and repair parts, heat, light, and power for garage and garage office; insurance (including public liability and property damage insurance) on garage equipment, transportation equipment, and heavy work equipment; license

fees for vehicles and drivers; maintenance of transportation and garage equipment, operation of garages; and rent of garage buildings and grounds.

(b) *Reimbursement of equipment costs.* The equipment expenses may include the cost of supervision, labor, and expenses incurred in the operation and maintenance of the transportation equipment and heavy equipment of the utility, including direct taxes and depreciation.

(c) Reimbursement will be limited to charges which account for costs to the utility of expenses for equipment used § 645.112 (a) and (b)). Arbitrary or otherwise unsupported equipment use charges will not be reimbursed.

(1) *Small tools.* Reimbursement for use of small tools on a project will be made on the basis of tool expenses accumulated in and distributed through the utilities clearing accounts, or other equitable and supportable allocation basis; otherwise, it will be limited to actual loss or damage during the period of use. In the latter case, the loss or damage shall be billed in detail and properly supported.

(2) *Rental.* Where the utility does not have equipment available of the kind or type required, reimbursement will be limited to the amount of rental paid to the lowest qualified bidder following an appropriate solicitation for quotations from owners of the required kind or type of equipment. Existing continuing contracts for rental of transportation and heavy equipment, which the utility determines to be of the most advantage to its operations, may be considered as complying with these requirements. In the event of an emergency, such as a breakdown of the utility equipment or where additional equipment not originally contemplated is needed, and/or compliance with the foregoing requirements would seriously impair the prosecution of the utility work or highway construction, Federal funds may participate in the cost of equipment rental provided the utility can demonstrate that the above circumstances existed, and the rental charges so incurred were reasonable and did not result in and expenditure in excess of that justified by the prevailing conditions.

(d) Where the relocation work is to be performed by forces of a utility through the use of its own equipment, the accounting procedures and reimbursement standards established under § 645.112(a), (b), and (c) of this subpart shall apply except where the accounting system of the utility does not provide for capitalization of items or equipment acquired and recovery of original cost through depreciation, and use rates cannot be readily determined from the records of the utility. Where it is determined that the utility's accounting system is inadequate in such respects, and that it is not economically feasible to develop such costs under the reimbursement standards set forth in § 645.112(a), (b), and (c), then eligibility for reimbursement of costs incurred will be dependent upon:

(1) A satisfactory detailed cost estimate submitted by the utility which shall include:

(i) Description, rates, hours, compensation, and number of units of equipment proposed for use on the relocation.

(ii) An adequate explanation of the basis for developing the rates which the utility proposes as compensation.

(2) Incorporation in the State utility agreement, or by supplemental letter agreement, of the classes and types of equipment and the proposed compensation for each.

(e) FHWA may require such verification or further justification as necessary to assure the reasonableness for the compensation to the utility for the use of its equipment.

#### § 645.113 Transportation of employees.

(a) The cost of essential transportation performed in automobiles or trucks owned by the utility shall be considered to have been reimbursed in the payment of the operating costs of the conveyance equipment or of the rates representative of the equipment operating expenses as provided herein under "Equipment."

(b) Reimbursement for the required use of automobiles which are privately owned by employees of the utility will be limited to the established rates at which the utility reimburses its em-

employees for use in connection with its own construction and maintenance projects and operations.

(c) Reimbursements may be made for the cost of required commercial transportation by employees of the utility.

**§ 645.114 Utility bills.**

(a) Periodic progress billings of incurred costs may be made by a utility, if acceptable to the State, and reimbursement may be approved for claims of this type received from a State.

(b) One final and complete billing of all costs incurred shall be made by the utility at the earliest practicable date after completion of the work. The statement of final billing will follow as closely as possible the order of the items in the estimate portion of the agreement between the State and the utility. Except where the estimated and final billing are made pursuant to the requirements of § 645.107(h)(2)(i), the statement of final billings shall be itemized to show the totals for labor, overhead construction costs, travel expense, transportation, equipment, material and supplies, handling costs, and other services. The billing shall be shown in such a manner as will permit comparison with the approved plans and estimates. Materials are to be itemized, where they represent major components or cost in the relocation, following the pattern set out in the approved estimate as closely as is possible. Salvage credits from recovered and replaced permanent and recovered temporary material should be reported in the bill in relative position with the charge for the replacement or the original charge for temporary use. The final billing shall show:

(1) The description and site of the project;

(2) The Federal-aid project number;

(3) The dates on which the State utility agreement was executed and the first work was performed or, if preliminary engineering or right-of-way items are involved, the date on which the earliest item of billed expense was incurred;

(4) The date on which the last work was performed or the last item of billed expense was incurred; and

(5) The location where the records and accounts billed can be audited.

(c) The utility shall make adequate reference in the billing to its records, accounts, and other relevant documents.

(d) All records and accounts are subject to audit by representatives of State and Federal Government. During the progress of construction and for a period not less than 3 years from the date final payment has been received by the utility company, records and the accounts pertaining to the construction of the project, accounting therefor, will be available for inspection by the representatives of the State and Federal Government.

(e) Reimbursement for a final utility billing shall not be approved until unless the State furnishes evidence that it has paid the utility from its own funds, or funds of a political division, pursuant to State law, subject to §§ 645.103(c) and 645.104 of this subpart and, except for the sums, following an audit of the records included in the final billing.

**§ 645.115 Accommodation and installation.**

(a) Utility facilities which are retained, installed, adjusted, or relocated within the right-of-way of a Federal-aid project are to be accommodated in accordance with the provisions of 23 CFR Part 645, Subpart B.

(b) In instances where utility facilities are to use and occupy the right-of-way of a proposed Federal-aid project on or before the State is authorized to proceed with the physical construction of the highway project, the State is to demonstrate to the satisfaction of FHWA that:

(1) A satisfactory agreement has been reached between the State and all utility owners or the owners of private lines involved, in accordance with 23 CFR Part 645, Subpart B or arrangements therefor are underway leading to such agreement prior to final acceptance of the highway construction project by FHWA, and

(2) The interest acquired by, vested with, the State in that portion of the highway right-of-way to be dedicated, used, or occupied by the utility

ilities or private lines is of a nature and extent adequate for the construction, operation, and maintenance of the highway project, and

(3) Suitable arrangements have been made between such owners and State for accomplishing, scheduling, and completing the relocation or adjustment work, for the disposition of facilities to be removed from or abandoned within the highway right-of-way, and for the proper coordination of such activities with the planned highway construction. Such arrangements should be made at the earliest possible date in advance of the planned highway construction, and

(4) The bid proposals for the highway contract include appropriate notation identifying the utility work which is to be undertaken concurrently with the highway construction, in accordance with FHWA directive pertaining to authorization for physical construction, and

(5) The plans for the highway project have been prepared in accordance with the FHWA standards for preparation of plans and specifications for Federal-aid projects.

#### § 645.116 Alternate procedure.

(1) At the election of the State, an alternate procedure may be approved simplifying the processing of utility relocations or adjustments under provisions of this memorandum. Except as otherwise provided by § 645.116(b), the State will act in the advisory position of FHWA for review and approving the arrangements, estimates, plans, agreements, and other related matters required by this part as prerequisites for authorizing the utility to proceed with and complete the work.

(2) The scope of the State's approval authority under the alternate procedure includes all actions necessary to advance and complete all types of utility work under this subpart except in the following instances which are to be reviewed and approved in the normal manner on a case by case basis by FHWA, as prescribed elsewhere in this subpart.

(i) Utility relocations and adjustments involving major transfer, protection, and storage facilities such as

generating plants, power feed stations, pumping stations, reservoirs and the like.

(2) Utility relocations and adjustments falling within the scope of §§ 645.107(1), (m), and (q).

(c) Any State wishing to adopt the alternate procedure may file a formal application for approval by FHWA. The application must include the following:

(1) The State's written policies and procedures for administering and processing Federal-aid utility adjustments, which must make adequate provisions with respect to the following:

(i) Compliance with the requirements of this part, Subparts A and B, and applicable FHWA directives on third party contracts.

(ii) Advance utility liaison, planning, and coordination measures for providing adequate lead time and early utility relocation to minimize interference with the planned highway construction.

(iii) Appropriate administrative, legal, and engineering reviews and coordination procedures as necessary to determine the legal basis of the State's payment; the extent of eligibility of the work under State and Federal laws and regulations; the more restrictive payment standards under § 645.101(e); the necessity of the proposed utility work and its compatibility with proposed highway improvements; and provide for uniform treatment of the various utility matters and actions, consistent with sound management practices.

(iv) Documentation in the State files of actions taken in compliance with State policies and the provisions of this subpart.

(2) A statement signed by the chief administrative officer of the State highway department certifying that:

(i) Federal-aid utility relocations will be processed in accordance with the applicable provisions of this subpart and the State's utility policies and procedures submitted under § 645.116(c)(1),

(ii) Reimbursement will be requested in only those costs properly attributable to the proposed highway construction and eligible for participation under the provisions of this memorandum.



dum, as determined after appropriate audit by or for the State.

(d) Upon receipt of the formal application by the State for approval of the alternate procedure, FHWA will review the State's submission, utility organization and staffing and evaluate the State's practices and procedures thereunder. Where available, FHWA may use its current evaluation of the State's utility practices and procedures for this purpose. A report of the Division Administrator's findings and recommendations on the adequacy of the State's policies, procedures, practices, and organization is to be submitted to the Regional Administrator along with the State's formal application.

(e) When FHWA is satisfied that the State's alternate procedure and policies and practices thereunder form a suitable basis for approving reimbursement with Federal-aid highway funds, the State may be authorized to proceed with utility relocations in accordance with the certification previously furnished under § 645.116(c)(2): *Provided,*

(1) The utility work has been included in an approved program.

(2) The State submits in writing a request for such authorization which shall include a list of the utility relocations on the project which are to be processed under the alternate procedure, along with the best available estimate of the total costs involved.

(f) The requests and authorization prescribed under § 645.116(e) should be made at the earliest feasible date in advance of the planned highway construction. Authorization by FHWA for the work described under § 645.116(b) (1) and (2) may be combined with the authorizations issued pursuant to § 645.116(e) with the understanding that later referral of the State-utility agreements, supporting plans and cost estimates to FHWA for review and approval will be required pursuant to § 645.107(n).

(g) If, due to unforeseen circumstances, the State later finds that additional utilities must be relocated on a project, they shall so inform FHWA of the additional work to be processed under the alternate procedure and request separate authorization thereof

in accordance with the manner prescribed in § 645.116(e). Emergency situations may be handled by advance oral arrangement and later confirmed in writing to the State by FHWA.

(h) At least once every three years FHWA shall make a comprehensive review and evaluation of all phases of the State's procedures and practices for relocating, adjusting, and accommodating utilities under the appropriate alternate procedure.

(i) Any changes, additions, or deletions the State proposes to the alternate procedure approved by FHWA pursuant to § 645.116(e) are to be submitted by the State to FHWA for approval prior to implementing the proposed modifications. Such request by the State, must be accompanied by a statement signed by the chief administrative officer of the State highway department, verifying the certification made under § 645.116(c)(2) and its application to the proposed modifications. FHWA may continue to approve utility work under the previously approved alternative procedure, pending approval of the proposed modifications.

(j) FHWA may suspend approval of the certified procedure and resume approval of all utility relocations, when utility reviews disclose instances of noncompliance with the terms of State's certification. Federal-aid funds will not be eligible to participate in utility relocation costs incurred by the State that do not qualify under the terms of the certification made pursuant to § 645.116(c)(2) and (i).

(k) The provisions of this section shall not alter the FHWA approval authority required by §§ 645.103(a) (2) and 645.114(e), and 645.115(b) of this part or § 645.207(e) of Subpart B of this part.

#### APPENDIX—CERTIFICATION OF CONSULTANT

I hereby certify that I am \_\_\_\_\_ (title) and duly authorized representative of the firm of \_\_\_\_\_ whose address is \_\_\_\_\_, and

That, except as expressly stated and described herein, neither I nor the firm \_\_\_\_\_ has, in connection with contract with \_\_\_\_\_, (name of utility)

7) entered into pursuant to provisions of an agreement between the aforementioned utility and the State of \_\_\_\_\_, as a part of Federal-aid project \_\_\_\_\_,

(a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm, company, or person, other than a bona fide employee working solely for me or the aforementioned firm, to solicit or secure the contract,

(b) Agreed, as an express or implied condition for obtaining the award of the contract, to employ or retain the services of any firm, company, or person in connection with the carrying out of the contract, or

(c) Paid, or agreed to pay, to any firm, company, organization, or person, other than a bona fide employee working solely for me or the aforementioned firm, any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

*Statement and explanation of exceptions, if any:*

I acknowledge that this certificate is to be furnished to the State highway department of the Federal Highway Administration, in connection with the aforementioned project involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
(Signature)

## Subpart B—Accommodation of Utilities

### § 645.201 Purpose.

To prescribe policies and procedures for accommodating utility facilities on the rights-of-way of Federal and Federal-aid highway projects. It implements the applicable provisions of 23 U.S.C. 123 and 127 and 23 U.S.C. 116, with respect to the maintenance obligations of the State thereunder as affected by the use of the rights-of-way of Federal-aid highway projects for accommodating utility facilities.

### § 645.202 Policy.

(a) It is in the public interest for utility facilities to be accommodated on the rights-of-way of a Federal or Federal-aid highway project when such use and occupancy of the highway rights-of-way does not interfere with the free and safe flow of traffic and otherwise impair the highway or its visual quality and does not conflict with the provisions of Federal, State,

or local laws or regulations or the provisions of this subpart.

(b) These provisions concern the location and manner in which utility installations are to be made within the rights-of-way of Federal and Federal-aid highway projects and the measures, to be taken by highway authorities to preserve and protect the integrity and visual qualities of the highway and the safety of highway traffic. This subpart shall not be construed to alter the authority of utilities to install their facilities on public highways pursuant to law or franchise and reasonable regulation by highway authorities with respect to location and manner of installation.

### § 645.203 Application.

(a) Effective on date of issuance.

(b) It applies to new utility installations within the rights-of-way of active and completed Federal and Federal-aid highway projects, except Secondary Road Plan projects. Application to the projects described under § 645.206 (a) and (d) will be limited to projects that are authorized after October 1, 1969.

(c) It also applies to existing utility installations which are to be retained, relocated, or adjusted within the rights-of-way of active highway projects, as described in § 645.203(b), and to existing lines which are to be adjusted or relocated under § 645.206(c). It shall not be applied to a minor segment of an existing utility installation in such a manner as to result in misalignment of the installation or adjustment of the entire installation except in those cases where a hazardous condition exists as defined in § 645.206(c). Where existing installations are to remain in place within the rights-of-way without adjustment, the State and utility are to enter into an agreement under §§ 645.206(h) or 645.209, as may govern, or existing agreements in effect at the time of the highway construction may be accepted, or amended, as may be appropriate.

(d) Until approval is given to the utility accommodation policies and procedures of the State or its political subdivision by FHWA under

§ 645.207(b) of this subpart, utility installations within the rights-of-way of Federal and Federal-aid highway projects shall as a minimum, meet the requirements set forth in § 645.206.

(e) The provisions of § 645.206(g) apply only to the lands described therein which are acquired or improved with Federal highway or Federal-aid highway funds.

#### § 645.204 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) "Utility facilities and/or utilities" means and includes all privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including fire and police signal systems and street lighting systems, which directly or indirectly serve the public or any part thereof. The term "utility" means the utility company, i.e., any person or private or public entity owning and/or operating utility facilities as defined in this paragraph, including any wholly owned or controlled subsidiary.

(b) "Private lines" means privately owned facilities which convey or transmit the commodities outlined in paragraph (a) of this section but are devoted exclusively to private use.

(c) "Federal highway projects" are those projects involving the use of funds administered by the Federal Highway Administration (FHWA) where the location, design, or construction of the project is under the direct supervision of the FHWA.

(d) "Federal-aid highway projects" are those projects administered by a State which involve the use of Federal-aid highway funds for the construction or improvement of a Federal-aid highway or related highway facilities or for the acquisition of rights-of-way for such projects, including highway beautification projects under section 319, title 23, United States Code.

(e) "Active Federal or Federal-aid highway projects" are those projects for which any phase of development has been programed for Federal or

Federal-aid highway funds and State or other highway authority control of the highway rights-of-way. A project will be considered active until the date of its final acceptance by the FHWA and thereafter will be considered completed.

(f) "Rights-of-way" means real property or interests therein, acquired, dedicated, or reserved for the construction, operation, and maintenance of a highway in which Federal-aid highway funds are or may be involved in any stage of development. Lands acquired under 23 U.S.C. 315 (scenic strips—1965 Highway Beautification Act) shall be considered to be highway rights-of-way.

(g) "Highway" means any public way for vehicular travel, including the entire area within the rights-of-way and related facilities, constructed or improved in whole or in part with Federal-aid or Federal highway funds.

(h) "Freeway" means a divided highway with full control of access.

(i) "States" means that department, commission, board, or official of a State charged by its laws with the responsibility for highway administration.

(j) "Use and occupancy agreement" means the document by which a State, or other highway authority, proves the use and occupancy of highway rights-of-way by utility facilities or private lines.

(k) "Utility service connection" means a service connection from a utility distribution or feeder line to the premises served.

(l) "Secondary Road Plan"—is a statement, prepared by a State highway department and approved by the FHWA, in which the State outlines the standards and procedures it will use to plan, design, and construct projects on the Federal-aid Secondary Highway System which are to be financed in part with Federal-aid Secondary Highway Funds in accordance with 23 U.S.C. 117 and Part 642 of this chapter.

(m) "Clear roadside policy" means that policy employed by a highway authority to increase safety, improve traffic operations, and enhance the visual quality of highways by design

ing, constructing, and maintaining highway roadsides as wide, flat, and rounded as practical and as free as practical from physical obstructions above the ground.

(n) "Visual quality" means those desirable characteristics of the appearance of the highway and its environment, such as harmony between or blending of natural and manmade objects in the environment, continuity of visual form without distracting interruptions, and simplicity of designs which are desirably functional in appearance but without clutter.

(o) "New utility installations" means utility installations on the highway rights-of-way and the replacement of existing facilities with those of a different type, capacity, or design or replacement at a new location on the rights-of-way. Any replacement of an existing facility or portion thereof by another of the same type, capacity, and design at the same location is considered to be maintenance.

#### 5.205 General provisions.

(1) It is the responsibility of each State to maintain, or cause to be maintained, Federal-aid highway projects necessary to preserve the integrity, visual quality, operational safety, and function of the highway facility.

(2) Since the manner in which utilities cross or otherwise occupy the rights-of-way of a Federal or Federal-aid highway project can materially affect the highway, its visual quality, operation, and maintenance, it is necessary that such use and occupancy where authorized, be regulated by highway authorities. In order for a State to fulfill its responsibilities in this area, it must exercise, or cause to be exercised, reasonable regulation of such use and occupancy through establishment and enforcement of utility accommodation policies and procedures.

#### 5.206 Requirements.

(1) On Federal highway projects authorized after October 1, 1969, FHWA rules apply, or cause to be applied, utility accommodation policies similar to those required on Federal-aid highway projects, as appropriate and necessary to accomplish the objectives of this

subpart. Where appropriate, agreements shall be entered into between FHWA and the State or local highway authorities or other government agencies, or existing agreements should be amended, as may be necessary for the Regional Administrator to establish, or cause to be established, adequate control and regulation of use by utilities and private lines of the rights-of-way of Federal highway projects.

(2) Utility accommodation policies and procedures for Federal-aid secondary highway projects will be in accordance with a State's approved Secondary Road Plan under Part 642 of this chapter.

(3) Where the State, or other highway authority, determines that existing utility facilities are likely to be associated with injury or accident to the highway user, as indicated by accident history or safety studies, the responsible highway authority is to initiate appropriate corrective measures to provide a safe traffic environment. Any requests received from the State involving Federal fund participation in the cost of adjusting or relocating utility facilities pursuant to this paragraph shall be subject to the provisions of Part 645, Subpart A of this chapter.

(4) The following procedures apply where the State is without legal authority to regulate the use by utilities or private lines of the rights-of-way of Federal-aid highway projects.

(1) All such projects authorized after October 1, 1969, shall include a special provision in the project agreement for regulating such use of the highway rights-of-way. The provision shall require that the State will, by formal agreement with appropriate officials of a county or municipal government, regulate, or cause to be regulated, such use by highway authorities on a continuing basis and in accordance with a satisfactory utility accommodation policy for the type of highway involved.

(2) For the purpose of this paragraph, a satisfactory utility accommodation policy is one that prescribes a degree of protection to the highway at least equal to the protection provided by the State's utility accommodation

policy approved under § 645.207 (b) and (c).

(3) Such projects may be conditionally authorized in accordance with the provisions of § 645.203(d), pending approval of a satisfactory utility accommodation policy by FHWA under § 645.207(b).

(e) Utilities that are to cross or otherwise occupy the rights-of-way of Federal-aid freeways, including Interstate highways, shall meet the requirements of the AASHO "Policy on the Accommodation of Utilities on Freeway Rights-of-Way". Application of joint development and multiple-use concepts dictates that maximum use of the highway be made for other purposes where such use does not adversely affect the design, construction, integrity, and operational characteristics of the freeway. In the advancement of these concepts and when the State has legal authority to do so and so requests, approval may be given for installing trunkline or transmission type utility facilities within a utility strip on and along the outer border of existing freeway rights-of-way. (See Appendix A.)

(f) In expanding areas along Federal-aid freeways it is expected that utilities will normally install distribution or feeder line crossings of freeways, spaced as needed to serve consumers in a general area along either or both sides of a freeway, so as to minimize the need for crossings of a freeway by utility service connections. In areas where utility services are not available within reasonable distance along the side of the freeway where the utility service is needed, crossings of Federal-aid freeways by utility service connections may be permitted.

(g) The type and size of utility facilities and the manner and extent to which they are permitted within areas of scenic enhancement and natural beauty can materially alter the visual quality and view of highway roadsides and adjacent areas. Such areas include scenic strips, overlooks, rest areas, recreation areas, the rights-of-way of highways adjacent thereto, and the rights-of-way of highways which pass through public parks and historic sites, as described under section 138, Title 23, United States Code.

(1) New utility installations are to be permitted within the foregoing described lands, when acquired or improved with Federal highway or Federal-aid highway funds, except as follows:

(i) New underground installations may be permitted where they do not require extensive removal or alteration of trees visible to the highway user or impair the visual quality of lands being traversed.

(ii) New aerial installations are to be avoided at such locations unless there is no feasible and prudent alternative to the use of such lands by the utility facility and it is demonstrated to the satisfaction of the division engineer that:

(A) Other locations:

(1) Are not available or are unusually difficult and unreasonably costly.

(2) Are less desirable from the standpoint of visual quality.

(B) Undergrounding is not technically feasible or is unreasonably costly.

(C) The proposed installation will be made at a location and will employ suitable designs and materials which will give the greatest weight to the visual qualities of the area being traversed. Suitable designs will include, but not be limited to, self-supporting, single-pole construction with a vertical configuration of conductors and cable.

(2) The provisions of § 645.206 also apply to utility installations which are needed for a highway purpose such as for highway lighting, to serve a weigh station, rest or recreational area.

(3) There may be cases of unusual hardship or other extenuating circumstances encountered involving some degree of variance with the provisions of § 645.206(g). Such cases shall be subject to prior review and concurrence by FHWA. Where a hardship case involves a proposed installation within the rights-of-way of a highway passing through a public park, area, site, as described under 23 U.S.C. 138, the views of appropriate planning and resource authorities having jurisdiction over the land through which the highway passes shall be obtained.

(h) Where the utility has a compensable interest in the land occupied

its facilities and such land is to be jointly owned and used for highway and utility purposes, the responsible highway authority and utility shall agree in writing as to the obligations and responsibilities of each party. Such agreements shall incorporate the conditions of occupancy for each party, including the rights vested in the highway authority and the rights and privileges retained by the utility. The interest to be acquired by or vested in the highway authority in any portion of the rights-of-way of a Federal or Federal-aid highway project to be vacated, used or occupied by utilities or private lines shall be of nature and extent adequate for the construction, safe operation, and maintenance of the highway project.

#### § 645.207 Reviews and approvals.

(a) Each State shall submit a report to FHWA on the authority of utilities use and occupy the rights-of-way of the highways, the State's authority to regulate such use and the policies and procedures the State employs or proposes to employ for accommodating utilities within the rights-of-way of Federal-aid highways under its jurisdiction. Where applicable, the State shall include similar information on use and occupancy of such highways by private lines where permitted under State law. The State shall identify those sections, if any, of the Federal-aid highway systems within its borders where the State is without authority to regulate use by utilities.

(b) Upon determination by the FHWA that a State's policies and procedures under § 645.207(a) and the policies to be employed pursuant to § 645.206(d) meet the requirements of this subpart, they may be approved for use on Federal-aid highway projects in that State or political subdivision.

(c) Any changes, additions, or deletions by the State or political subdivision proposed to the policies and procedures approved by FHWA pursuant to this subpart shall be subject to the provisions of § 645.207(a) and (b).

(d) The State's practices under the policies and procedures or agreements approved under § 645.207(e) shall be

periodically reviewed by FHWA and reported to the Regional Administrator.

(e) When a utility files a notice or makes an individual application or request to a State to use or occupy the rights-of-way of a Federal-aid highway project, the State is not required to submit the matter to FHWA for prior concurrence, except under the following circumstances:

(1) Installations on Federal-aid highways where the State proposes to permit the use and occupancy by utilities not in accordance with the policies and procedures approved by FHWA under § 645.207(b).

(2) Installations involving unusual hardship cases pursuant to § 645.206(g).

(3) Installations on Federal-aid freeways involving extreme case exceptions, as described in the AASHTO "Policy on the Accommodation of Utilities on Freeway Rights-of-Way". (Includes cases involving the application of multiple use and joint development concepts to freeways and utilities, Appendix A of this subpart.)

(4) Installations on or across Interstate highways where approval has not been given to the utility accommodation policies and procedures under § 645.207(b).

#### § 645.208 State accommodation policies and procedures.

(a) This section outlines provisions considered necessary to establish policies and procedures for accommodating utility facilities on the rights-of-way of Federal-aid highway projects. These policies and procedures shall meet the requirements of § 645.206(e) through (h) and shall include adequate provision with respect to the following:

(1) Utilities must be accommodated and maintained in a manner which will not impair the highway or interfere with the safe and free flow of traffic.

(2) Consideration shall be given to the effect of utility installations in regard to safety, visual quality, and the cost or difficulty of highway and utility construction and maintenance.

(3) The use and occupancy of highway rights-of-way by utilities must comply with the State's standards regulating such use. These standards must include but are not limited to the following:

(i) The horizontal and vertical location requirements and clearances for the various types of utilities must be clearly stated. These must be adequate to insure compliance with clear roadside policies for the particular highway involved.

(ii) The applicable provisions of government or industry codes required by law or regulation must be set forth or appropriately referenced, including highway design standards of other measures which the State deems necessary to provide adequate protection to the highway, its safe operation, visual quality and maintenance.

(iii) Specifications for and methods of installation; requirements for preservation and restoration of highway facilities, appurtenances, and natural features on the rights-of-way; and limitations on the utility's activities within the rights-of-way should be prescribed as necessary to protect highway interests.

(iv) Measures necessary for protection of traffic and its safe operation during and after installation of facilities, including control-of-access restrictions, provisions for rerouting or detouring of traffic, traffic control measures to be employed, limitations on vehicle parking and materials storage, protection of open excavations and the like must be provided.

(4) Compliance with applicable State laws and approved State accommodation policies must be assured. The responsible highway authority's file must contain evidence in writing as to the terms under which utility facilities are to cross or otherwise occupy highway rights-of-way in accordance with § 645.209. All utility installations made on highway rights-of-way shall be subject to approval by the State or by other highway authorities under § 645.206(d) as is required by State law and applicable regulations. However, such approval will not be required where so provided in the use and occupancy agreement for such matters as facility maintenance, installation of

service connections on highways other than freeways or emergency operations.

**§ 645.209 Use and occupancy agreement**

(a) The use and occupancy agreements setting forth the terms under which the utility is to cross or otherwise occupy the highway rights-of-way must include or by reference incorporate:

(1) The State standards for accommodating utilities. Since all of the standards will not be applicable to individual utility installation, the use and occupancy agreement must, at a minimum, describe the requirements for location, construction, protection of traffic, maintenance, access restrictions and any special conditions applicable to each installation.

(2) A general description of the type, nature, and extent of the utility facilities being located within the highway rights-of-way.

(3) Adequate drawings or sketches showing the existing and/or proposed location of the utility facilities within the highway rights-of-way with respect to the existing and/or planned highway improvement, the travel way, the rights-of-way lines and, where applicable, the control of access lines and approved access points.

(4) The extent of liability and responsibilities associated with future adjustment of the utilities to accommodate highway improvements.

(5) The action to be taken in case of noncompliance with the State's requirements.

(6) Other provisions as deemed necessary to comply with laws and regulations.

(b) The form of the use and occupancy agreement is not prescribed. At the State's option, the use and occupancy provisions may be incorporated as a part of the reimbursement agreement required by § 645.107.

(c) Area or statewide master agreements covering the general terms of a utility's use and occupancy of the highway rights-of-way may be used where provided individual requests for such use and occupancy are processed in accordance with § 645.208(a)(4).

# APPENDIX A—APPLICATION OF JOINT DEVELOPMENT AND MULTIPLE USE CONCEPTS TO FREEWAYS AND UTILITIES

(REFER TO § 645.206(e))

The third paragraph of Item 2 of the AASHO "Policy on the Accommodation of Utilities on Freeway Rights-of-Way," dated February 15, 1969, provides that a utility may be permitted along a freeway on new station under certain stated conditions. These provisions for extreme case exceptions to the AASHO policy have served well to preserve and protect the access control feature of interstate highways. Experience has demonstrated the need and merit for maintaining this protection on all freeways. This appendix outlines additional FHWA policies on these matters. It provides a practical method for applying both the AASHO policy and joint development and multiple use concepts to freeways and utilities, especially at locations within and approaching metropolitan areas where land is scarce and utility-of-way is expensive. It preserves the access control feature of these important freeways but recognizes the merit and need for accommodating trunkline and transmission-type utility facilities under strictly controlled conditions. Finally, it establishes a policy for accommodating the highest type of utility facilities along and within the rights-of-way of the highest type of highway facility under conditions where the construction, maintenance, and operations of one do not adversely affect those of the other. The provisions of this appendix are for application to Interstate highways and to Federal-aid freeways that are open to traffic or under construction. They do not apply to installations on freeway bridge structures or within freeway tunnels and do not alter the provisions for these matters under Items 4 and 6 of the AASHO policy. The policy may be applied to planned freeway projects as necessary to accommodate the longitudinal relocation of existing trunkline transmission type facilities which fall in the path of the planned highway construction. However, establishing a utility strip will not be the basis for expanding Federal-aid highway funds for acquiring rights-of-way in excess of that needed for the construction, operation, and maintenance of a freeway. Where a utility files notice or makes application to a State to use or occupy freeway rights-of-way along routes of one of the Federal-aid highway systems under the existing conditions, the matter is to be referred by the State to FHWA for prior concurrence under the well-established procedures for processing cases under the

AASHO policy. In each instance there is to be a showing that the provisions of the AASHO policy have been met and the following conditions have been satisfied:

(1) A utility strip will be established by an inward relocation of the access control line to the extent necessary to permit installation of the utility facility outside the access control limits.

(2) The utility strip may be established only where the freeway rights-of-way are of ample width to accommodate utility facilities without adverse effect to the design, construction, integrity, and operational characteristics of the freeway, only where such rights-of-way will not be needed for the foreseeable expansion of the freeway and only where there can be satisfactory provision for any needed highway and/or utility maintenance within the utility strip.

(3) Normally, a utility strip is not to be established at locations where it is feasible to accommodate utilities on frontage roads or adjacent public roads or streets.

(4) The State or its political subdivision is to retain ownership of the freeway rights-of-way so utilized, including control and regulation of the use and occupancy of the rights-of-way by utilities.

(5) Existing fences should be retained and, except along sections of freeways having frontage roads, planned fences should be located at the freeway right-of-way line.

(6) In each case, there must be a showing that installation on the freeway rights-of-way is the most feasible and prudent location available from the standpoint of the highway user and utility consumer.

(7) The lateral location of underground installations shall be suitable offset from the slope, ditch, and/or curb line. For poles or other ground-mounted utility facilities, the lateral location shall comply with the clearances set forth in Item 5B of the AASHO policy.

(8) Aerial installations are to be limited to self-supporting single pole construction, preferably with vertical configuration of conductors and cables. Not more than one line of support poles for aerial facilities will be permitted within a utility strip. Joint-use facilities will be allowed.

(9) Service connections from the trunkline or transmission-type facilities to utility consumers will not be permitted from the utility strip.

(10) Suitable advance arrangements are to be made for servicing the utility facilities without access from through-traffic roadways or ramps, in accordance with Item 7 of the AASHO policy. At interchanges, access to utility supports, manholes, or other appurtenances may be permitted from the through-traffic roadways or ramps in accordance with Item 7 of the AASHO policy, but only by permits issued by the highway



agency to the utility owner setting forth the conditions for policing and other controls to protect highway users.

(11) Where the freeway passes through or along areas of scenic enhancement and natural beauty, as described in § 645.206(g), utility installations shall be made as provided therein.

(12) The facilities installed within a utility strip shall be of durable materials designed for long service life expectancy and relatively free from routine servicing and maintenance.

[38 FR 29959, Oct. 31, 1973. Redesignated at 39 FR 10430, Mar. 20, 1974, and amended at 42 FR 30835, June 17, 1977]

## PART 646—RAILROADS

### Subpart A—Railroad-Highway Insurance Protection

Sec.

646.101 Purpose.

646.103 Application.

646.105 Contractor's public liability and property damage insurance.

646.107 Railroad protective insurance.

646.109 Types of coverage.

646.111 Amount of coverage.

### Subpart B—Railroad-Highway Projects

646.200 Purpose and applicability.

646.202 Authority.

646.204 Definitions.

646.206 Types of projects.

646.208 Funding.

646.210 Classification of projects and railroad share of the cost.

646.212 Federal share.

646.214 Design.

646.216 General procedures.

646.218 Simplified procedure for accelerating grade crossing improvements.

646.220 Alternate Federal-State procedure.

### Subpart A—Railroad-Highway Insurance Protection

**AUTHORITY:** 23 U.S.C. 315; 49 CFR 1.48(b).

**SOURCE:** 39 FR 36474, Oct. 10, 1974, unless otherwise noted.

#### § 646.101 Purpose.

The purpose of this part is to prescribe provisions under which Federal funds may be applied to the costs of public liability and property damage insurance obtained by contractors (a) for their own operations, and (b) on behalf of railroads on or about whose right-of-way the contractors are re-

quired to work in the construction of highway projects financed in whole or in part with Federal funds.

#### § 646.103 Application.

(a) This part applies:

(1) To a contractors' legal liability for bodily injury to, or death of, persons and for injury to, or destruction of, property.

(2) To the liability which may attach to railroads for bodily injury to death of, persons and for injury to destruction of, property.

(3) To damage to property owned or in the care, custody or control of the railroads, both as such liability damage may arise out of the contractor's operations, or may result from work performed by railroads about railroad rights-of-way in connection with projects financed in whole or in part with Federal funds.

(b) Where the highway construction is under the direct supervision of Federal Highway Administration (FHWA), all references herein to State shall be considered as references to the FHWA.

#### § 646.105 Contractor's public liability and property damage insurance.

(a) Contractors may be subject to liability with respect to bodily injury or death of persons, and injury to destruction of property, which may be suffered by persons other than their own employees as a result of their operations in connection with construction of highway projects located wholly or in part within railroad right-of-way and financed in whole or in part with Federal funds. Protection cover such liability of contractors shall be furnished under regular contractors' public liability and property damage insurance policies issued in the names of the contractors. Such policies shall be so written as to furnish protection to contractors respecting their operations in performing work covered by their contract.

(b) Where a contractor sublets part of the work on any project to a subcontractor, the contractor shall be required to secure insurance protection in his own behalf under contractor's public liability and property

damage insurance policies to cover any liability imposed on him by law for damages because of bodily injury to, or death of, persons and injury to, or destruction of, property as a result of work undertaken by such subcontractors. In addition, the contractor shall provide for and on behalf of any such subcontractors protection to cover like liability imposed upon the latter as a result of their operations by means of separate and individual contractor's public liability and property damage policies; or, in the alternative, each subcontractor shall provide satisfactory insurance on his own behalf to cover his individual operations.

(c) The contractor shall furnish to the State highway department evidence satisfactory to such department and to the FHWA that the insurance coverages required herein have been provided. The contractor shall also furnish a copy of such evidence to the railroad or railroads involved. The insurance specified shall be kept in force until all work required to be performed shall have been satisfactorily completed and accepted in accordance with the contract under which the construction work is undertaken.

#### 646.107 Railroad protective insurance.

In connection with highway projects or the elimination of hazards of railroad-highway crossings and other highway construction projects located in whole or in part within railroad right-of-way, railroad protective liability insurance shall be purchased on behalf of the railroad by the contractor. The standards for railroad protective insurance established by §§ 646.109 through 646.111 shall be adhered to insofar as the insurance laws of the State will permit.

[39 FR 36474, Oct. 10, 1974, as amended at 47 FR 33955, Aug. 5, 1982]

#### § 646.109 Types of coverage.

(a) Coverage shall be limited to damage suffered by the railroad on account of occurrences arising out of the work of the contractor on or about the railroad right-of-way, independent of the railroad's general supervision or control, except as noted in § 646.109(b)(4).

(b) Coverage shall include:

(1) Death of or bodily injury to passengers of the railroad and employees of the railroad not covered by State workmen's compensation laws;

(2) Personal property owned by or in the care, custody or control of the railroads;

(3) The contractor, or any of his agents or employees who suffer bodily injury or death as the result of acts of the railroad or its agents, regardless of the negligence of the railroad;

(4) Negligence of only the following classes of railroad employees:

(i) Any supervisory employee of the railroad at the job site;

(ii) Any employee of the railroad while operating, attached to, or engaged on, work trains or other railroad equipment at the job site which are assigned exclusively to the contractor; or

(iii) Any employee of the railroad not within (b)(4)(i) or (ii) who is specifically loaned or assigned to the work of the contractor for prevention of accidents or protection of property, the cost of whose services is borne specifically by the contractor or governmental authority.

#### § 646.111 Amount of coverage.

(a) The maximum dollar amounts of coverage to be reimbursed from Federal funds with respect to bodily injury, death and property damage is limited to a combined amount of \$2 million per occurrence with an aggregate of \$6 million applying separately to each annual period except as provided in paragraph (b) of this section.

(b) In cases involving real and demonstrable danger of appreciably higher risks, higher dollar amounts of coverage for which premiums will be reimbursable from Federal funds shall be allowed. These larger amounts will depend on circumstances and shall be written for the individual project in accordance with standard underwriting practices upon approval of the FHWA.

[39 FR 36474, Oct. 10, 1974, as amended at 47 FR 33955, Aug. 5, 1982]

### Subpart B—Railroad-Highway Projects

AUTHORITY: 23 U.S.C. 315; 49 CFR 1.48.

SOURCE: 40 FR 16059, Apr. 9, 1975, unless otherwise noted.

**§ 646.200 Purpose and applicability.**

(a) The purpose of this subpart is to prescribe policies and procedures for advancing Federal-aid projects involving railroad facilities.

(b) This subpart, and all references hereinafter made to "projects," applies to Federal-aid projects involving railroad facilities, including projects for the elimination of hazards of railroad-highway crossings, and other projects which use railroad properties or which involve adjustments required by highway construction to either railroad facilities or facilities that are jointly owned or used by railroad and utility companies.

(c) Additional instructions for projects involving the elimination of hazards of railroad-highway grade crossings pursuant to 23 U.S.C. 405 and Section 203 of the Highway Safety Act of 1973 are set forth in 23 CFR Part 924.

(d) Procedures on reimbursement for projects undertaken pursuant to this subpart are set forth in 23 CFR, Part 140, Subpart I.

(e) Procedures on insurance required of contractors working on or about railroad right-of-way are set forth in 23 CFR, Part 646, Subpart A.

(f) Audit requirements for work undertaken pursuant to this subpart which is not accomplished under competitive bidding procedures are set forth in 23 CFR, Part 170.

[40 FR 16059, Apr. 9, 1975, as amended at 45 FR 20795, Mar. 31, 1980]

**§ 646.202 Authority.**

This subpart is issued under authority of 23 U.S.C. 109(e), 120(d), 130, 315, and 405, Section 203 of the Highway Safety Act of 1973, and 49 CFR 1.48.

**§ 646.204 Definitions.**

For the purposes of this subpart, the following definitions apply:

(a) "Railroad" shall mean all rail carriers, publicly-owned, private, and common carriers, including line haul freight and passenger railroads, switching and terminal railroads and passenger carrying railroads such as

rapid transit, commuter and street railroads.

(b) "Utility" shall mean the line and facilities for producing, transmitting or distributing communication power, electricity, light, heat, gas, or water, steam, sewer and similar commodities.

(c) "Company" shall mean any railroad or utility company including a wholly owned or controlled subsidiary thereof.

(d) "'G' funds" signify those Federal-aid highway funds which, pursuant to 23 U.S.C. 120(d), may be used for projects for the elimination of hazards of railroad-highway crossings not exceed 10 percent of Federal-aid for appurtenances in accordance with U.S.C. 104.

(e) "Preliminary engineering" shall mean the work necessary to produce construction plans, specifications, and estimates to the degree of completeness required for undertaking construction thereunder, including locating, surveying, designing, and related work.

(f) "Construction" shall mean the actual physical construction to improve or eliminate a railroad-highway grade crossing or accomplish other railroad involved work.

(g) "A diagnostic team" means a group of knowledgeable representatives of the parties of interest in a railroad-highway crossing or a group of crossings.

(h) "Main line railroad track" means a track of a principal line of a railroad including extensions through yards upon which trains are operated in timetable or train order or both, the use of which is governed by block signals or by centralized traffic control.

(i) "Passive warning devices" means those types of traffic control devices including signs, markings and other devices, located at or in advance of grade crossings to indicate the presence of a crossing but which do not change aspect upon the approach or presence of a train.

(j) "Active warning devices" means those traffic control devices activated by the approach or presence of a train such as flashing light signals, automatic gates and similar devices, as well

as manually operated devices and crossing watchmen, all of which display to motorists positive warning of the approach or presence of a train.

**§ 646.206 Types of projects.**

(a) Projects for the elimination of hazards, to both vehicles and pedestrians, of railroad-highway crossings may include but are not limited to:

- (1) Grade crossing elimination;
  - (2) Reconstruction of existing grade separations; and
  - (3) Grade crossing improvements.
- (b) Other railroad-highway projects are those which use railroad properties or involve adjustments to railroad facilities required by highway construction but do not involve the elimination of hazards of railroad-highway crossings. Also included are adjustments to facilities that are jointly owned or used by railroad and utility companies.

**§ 646.208 Funding.**

(a) Federal-aid funding for projects which involve the elimination of hazards of railroad-highway crossings may, at the option of the State, be provided through one of the following alternative methods, within the qualifications prescribed for each:

- (1) "G" funding, as provided by 23 U.S.C. 120(d) and 130;
  - (2) Regular pro rata sharing as provided by 23 U.S.C. 120(a) and 120(c); and
  - (3) Funding authorized by 23 U.S.C. 120(b) and section 203 of the Highway Safety Act of 1973.
- (b) The adjustment of railroad facilities which does not involve the elimination of hazards of railroad-highway crossings may be funded through regular pro rata sharing, as provided by 23 U.S.C. 120 (a) and (c).

**§ 646.210 Classification of projects and railroad share of the cost.**

(a) State laws requiring railroads to share in the cost of work for the elimination of hazards at railroad-highway crossings shall not apply to Federal-aid projects.

(b) Pursuant to 23 U.S.C. 130(b), and 49 CFR 1.48:

- (1) Projects for grade crossing improvements are deemed to be of no as-

certainable net benefit to the railroads and there shall be no required railroad share of the costs.

(2) Projects for the reconstruction of existing grade separations are deemed to generally be of no ascertainable net benefit to the railroad and there shall be no required railroad share of the costs, unless the railroad has a specific contractual obligation with the State or its political subdivision to share in the costs.

(3) On projects for the elimination of existing grade crossings at which active warning devices are in place or ordered to be installed by a State regulatory agency, the railroad share of the project costs shall be 5 percent.

(4) On projects for the elimination of existing grade crossings at which active warning devices are not in place and have not been ordered installed by a State regulatory agency, or on projects which do not eliminate an existing crossing, there shall be no required railroad share of the project cost.

(c) The required railroad share of the cost under § 646.210(b) (3) shall be based on the costs for preliminary engineering, right-of-way and construction within the limits described below:

(1) Where a grade crossing is eliminated by grade separation, the structure and approaches required to transition to a theoretical highway profile which would have been constructed if there were no railroad present, for the number of lanes on the existing highway and in accordance with the current design standards of the State highway agency.

(2) Where another facility, such as a highway or waterway, requiring a bridge structure is located within the limits of a grade separation project, the estimated cost of a theoretical structure and approaches as described in § 646.210(c) (1) to eliminate the railroad-highway grade crossing without considering the presence of the waterway or other highway.

(3) Where a grade crossing is eliminated by railroad or highway relocation, the actual cost of the relocation project, the estimated cost of the relocation project, or the estimated cost of a structure and approaches as de-

scribed in § 646.210 (c) (1), whichever is less.

(d) Railroads may voluntarily contribute a greater share of project costs than is required. Also, other parties may voluntarily assume the railroad's share.

**§ 646.212 Federal share.**

(a) *General.* (1) Federal funds are not eligible to participate in costs incurred solely for the benefit of the railroad.

(2) At grade separations Federal funds are eligible to participate in costs to provide space for more tracks than are in place when the railroad establishes to the satisfaction of the State highway agency and FHWA that it has a definite demand and plans for installation of the additional tracks within a reasonable time.

(3) The Federal share of the cost of a grade separation project shall be based on the cost to provide horizontal and/or vertical clearances used by the railroad in its normal practice, subject to limitations as agreed to periodically by FHWA and the Joint American Association of State Highway and Transportation Officials (AASHTO)—Association of American Railroads (AAR) Committee, or as required by a State regulatory agency.

(b) *"G" Funds.* (1) The Federal share of the cost of a "G" funded project may be up to 100 percent of the cost of preliminary engineering and construction and 75 percent of the cost of right-of-way and property damage, except that the Federal share shall be reduced by the amount of any required railroad share of the cost.

(2) Projects for the elimination of hazards of railroad-highway crossings, either by crossing elimination, improvement, or the reconstruction of existing grade separations, as described in § 646.206(a) are eligible for "G" funding subject to the following limitations:

(i) For a new or reconstructed grade separation, the entire structure or structures and necessary highway and railroad approaches to accommodate both vehicular and pedestrian traffic.

(ii) Where another facility, such as a highway or waterway requiring a bridge structure, is located within the

limits of a grade separation project the estimated cost and limits of work for a theoretical structure and necessary approaches as in § 646.212(b) (2) (i) without considering the presence of the waterway or other highway.

(iii) For railroad or highway relocation the actual cost of the relocation project or the estimated cost of a theoretical structure and necessary approaches to eliminate the grade crossing(s) as in § 646.212(b) (2) (i) whichever is less.

(iv) Grade crossing improvements in the vicinity of the crossing and related work, including construction or reconstruction of the approaches as necessary to provide an acceptable transition to existing or improved highway gradients and alignments, and advance warning devices.

[40 FR 16059, Apr. 9, 1975, as amended at 47 FR 33955, Aug. 5, 1982]

**§ 646.214 Design.**

(a) *General.* (1) Facilities that are the responsibility of the railroad for maintenance and operation shall conform to the specifications and design standards used by the railroad in its normal practice, subject to approval by the State highway agency and FHWA.

(2) Facilities that are the responsibility of the highway agency for maintenance and operation shall conform to the specifications and design standards and guides used by the highway agency in its normal practice, subject to approval by FHWA.

(b) *Grade crossing improvements.* (1) All traffic control devices proposed shall comply with the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways supplemented to the extent applicable by State standards.

(2) Pursuant to 23 U.S.C. 109(e) where a railroad-highway grade crossing is located within the limits of or near the terminus of a Federal-aid highway project for construction of a new highway or improvement of the existing roadway, the crossing shall not be opened for unrestricted use by traffic or the project accepted by FHWA until adequate warning devices

for the crossing are installed and functioning properly.

(3)(i) "Adequate warning devices", under § 646.214(b)(2) or on any project where Federal-aid funds participate in the installation of the devices are to include automatic gates with flashing light signals when one or more of the following conditions exist:

(A) Multiple main line railroad tracks.

(B) Multiple tracks at or in the vicinity of the crossing which may be occupied by a train or locomotive so as to obstruct the movement of another train approaching the crossing.

(C) High Speed train operation combined with limited sight distance at either single or multiple track crossings.

(D) A combination of high speeds and moderately high volumes of highway and railroad traffic.

(E) Either a high volume of vehicular traffic, high number of train movements, substantial numbers of school buses or trucks carrying hazardous materials, unusually restricted sight distance, continuing accident occurrences, or any combination of these conditions.

(F) A diagnostic team recommends them.

(i) In individual cases where a diagnostic team justifies that gates are not appropriate, FHWA may find that the above requirements are not applicable.

(4) For crossings where the requirements of § 646.214(b)(3) are not applicable, the type of warning device to be installed, whether the determination made by a State regulatory agency, State highway agency, and/or the railroad, is subject to the approval of FHWA.

(c) *Grade crossing elimination.* All crossings of railroads and highways at grade shall be eliminated where there is full control of access on the highway (a freeway) regardless of the volume of railroad or highway traffic.

10 FR 16059, Apr. 9, 1975, as amended at 47 FR 33955, Aug. 5, 1982]

#### 646.216 General procedures.

(a) *General.* Unless specifically modified herein, applicable Federal-aid procedures govern projects undertaken pursuant to this subpart.

(b) *Preliminary engineering and engineering services.* (1) As mutually agreed to by the State highway agency and railroad, and subject to the provisions of § 646.216(b)(2), preliminary engineering work on railroad-highway projects may be accomplished by one of the following methods:

(i) The State or railroad's engineering forces;

(ii) An engineering consultant selected by the State after consultation with the railroad, and with the State administering the contract; or

(iii) An engineering consultant selected by the railroad, with the approval of the State and with the railroad administering the contract.

(2) Where a railroad is not adequately staffed, Federal-aid funds may participate in the amounts paid to engineering consultants and others for required services, provided such amounts are not based on a percentage of the cost of construction, either under contracts for individual projects or under existing written continuing contracts where such work is regularly performed for the railroad in its own work under such contracts at reasonable costs.

(c) *Rights-of-way.* (1) Acquisition of right-of-way by a State highway agency on behalf of a railroad or acquisition of nonoperating real property from a railroad shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) and applicable FHWA right-of-way procedures in 23 CFR, Chapter I, Subchapter H. On projects for the elimination of hazards of railroad-highway crossings by the relocation of railroads, acquisition or replacement right-of-way by a railroad shall be in accordance with 42 U.S.C. 4601 et seq.

(2) Where buildings and other depreciable structures of the railroad (such as signal towers, passenger stations, depots, and other buildings, and equipment housings) which are integral to operation of railroad traffic are wholly or partly affected by a highway project, the costs of work necessary to functionally restore such facilities are eligible for participation. However, when replacement of such facilities is

necessary, credits shall be made to the cost of the project for:

(i) Accrued depreciation, which is that amount based on the ratio between the period of actual length of service and total life expectancy applied to the original cost.

(ii) Additions or improvements which provide higher quality or increased service capability of the facility and which are provided solely for the benefit of the railroad.

(iii) Actual salvage value of the material recovered from the facility being replaced. Total credits to a project shall not be required in excess of the replacement cost of the facility.

(3) Where Federal funds participate in the cost of replacement right-of-way, there will be no charge to the project for the railroad's existing right-of-way being transferred to the State highway agency except when the value of the right-of-way being taken exceeds the value of the replacement right-of-way.

(d) *State-railroad agreements.* (1) Where construction of a Federal-aid project requires use of railroad properties or adjustments to railroad facilities, there shall be an agreement in writing between the State highway agency and the railroad company.

(2) The written agreement between the State and the railroad shall, as a minimum include the following, where applicable:

(i) The provisions of this subpart and of 23 CFR, Part 140, Subpart I, incorporated by reference.

(ii) A detailed statement of the work to be performed by each party.

(iii) Method of payment (either actual cost or lump sum),

(iv) For projects which are not for the elimination of hazards of railroad-highway crossings, the extent to which the railroad is obligated to move or adjust its facilities at its own expense,

(v) The railroad's share of the project cost,

(vi) An itemized estimate of the cost of the work to be performed by the railroad,

(vii) Method to be used for performing the work, either by railroad forces or by contract,

(viii) Maintenance responsibility,

(ix) Form, duration, and amounts any needed insurance,

(x) Appropriate reference to identification of plans and specifications

(xi) Statements defining the conditions under which the railroad will provide or require protective services during performance of the work, type of protective services and method of reimbursement to the railroad, and

(xii) Provisions regarding inspection of any recovered materials.

(3) On work to be performed by railroad with its own forces and where the State highway agency and railroad agree, subject to approval by FHWA, an agreement providing for a lump sum payment in lieu of later determination of actual costs may be used any of the following:

(i) Installation or improvement of grade crossing warning devices and grade crossing surfaces, regardless of cost, or

(ii) Any other eligible work where the estimated cost to the State of proposed railroad work does not exceed \$25,000 or

(iii) Where FHWA finds that the circumstances are such that this method of developing costs would be in the best interest of the public.

(4) Where the lump sum method of payment is used, periodic reviews and analyses of the railroad's methods of cost data used to develop lump sum estimates will be made.

(5) Master agreements between the State and a railroad on an areawide or statewide basis may be used. The agreements would contain the specifications, regulations, and provisions required in conjunction with work performed on all projects. Supportive data for each project or group of projects must, when combined with the master agreement by reference, satisfy the provisions of § 646.216(d)(2).

(6) Official orders issued by regulatory agencies will be accepted in lieu of State-railroad agreements only where, together with supplementary written understandings between the State and the railroad, they include the items required by § 646.216(d)(2).

(7) In extraordinary cases where FHWA finds that the circumstances

re such that requiring such agreement or order would not be in the best interest of the public, projects may be approved for construction with the aid of Federal funds, provided satisfactory commitments have been made with respect to construction, maintenance of the railroad share of project costs.

**(e) Authorizations.** (1) The costs of preliminary engineering, right-of-way acquisition, and construction incurred prior to the date each phase of the work included in an approved program authorized by FHWA are eligible for Federal-aid participation. Preliminary engineering and right-of-way acquisition costs which are otherwise eligible, but incurred by a railroad prior to authorization by FHWA, although reimbursable, may be included as part of the railroad share of project costs where such a share is required.

(2) Prior to issuance of authorization by FHWA either to advertise the project construction for bids or to proceed with force account construction for railroad work or for other construction affected by railroad work, the following must be accomplished:

(i) The plans, specifications and estimates must be approved by FHWA.

(ii) A proposed agreement between the State and railroad must be found satisfactory by FHWA. Before Federal funds may be used to reimburse the railroad for railroad costs the executed agreement must be approved by FHWA. However, cost for materials applied at the project site or specifically purchased and delivered to the railroad for use on the project may be reimbursed on progress billings without the approval of the executed State-Railroad Agreement in accordance with 23 CFR 140.922(a) and 140.218 of this part.

(iii) Adequate provisions must be made for any needed easements, right-of-way, temporary crossings for construction purposes or other property interests.

(iv) The pertinent portions of the State-railroad agreement applicable to protective services required during performance of the work must be included in the project specifications and special provisions for any construction contract.

(3) In unusual cases, pending compliance with § 646.216(e) (2) (ii), (iii) and (iv), authorization may be given by FHWA to advertise for bids for highway construction under conditions where a railroad grants a right-of-entry to its property as necessary to prosecute the physical construction.

**(f) Construction.** (1) Construction may be accomplished by:

(i) Railroad force account,

(ii) Contracting with the lowest qualified bidder based on appropriate solicitation,

(iii) Existing continuing contracts at reasonable costs, or

(iv) Contract without competitive bidding, for minor work, at reasonable costs.

(2) Reimbursement will not be made for any increased costs due to changes in plans:

(i) For the convenience of the contractor, or

(ii) Not approved by the State and FHWA.

(3) The State and FHWA shall be afforded a reasonable opportunity to inspect materials recovered by the railroad prior to disposal by sale or scrap. This requirement will be satisfied by the railroad giving written notice, or oral notice with prompt written confirmation, to the State of the time and place where the materials will be available for inspection. The giving of notice is the responsibility of the railroad, and it may be held accountable for full value of materials disposed of without notice.

(4) In addition to normal construction costs, the following construction costs are eligible for participation with Federal-aid funds when approved by the State and FHWA:

(i) The cost of maintaining temporary facilities of a railroad company required by and during the highway construction to the extent that such costs exceed the documented normal cost of maintaining the permanent facilities.

(ii) The cost of stage or extended construction involving grade corrections and/or slope stabilization for permanent tracks of a railroad which are required to be relocated on new grade by the highway construction. Stage or extended construction will be



approved by FHWA only when documentation submitted by the State establishes the proposed method of construction to be the only practical method and that the cost of the extended construction within the period specified is estimated to be less than the cost of any practicable alternate procedure.

(iii) The cost of restoring the company's service by adjustments of existing facilities away from the project site, in lieu of and not to exceed the cost of replacing, adjusting or relocating facilities at the project site.

(iv) The cost of an addition or improvement to an existing railroad facility which is required by the highway construction.

[40 FR 16059, Apr. 9, 1975, as amended at 40 FR 29712, July 15, 1975; 47 FR 33956, Aug. 5, 1982]

**§ 646.218 Simplified procedure for accelerating grade crossing improvements.**

(a) The procedure set forth in this section is encouraged for use in simplifying and accelerating the processing of single or multiple grade crossing improvements.

(b) Eligible preliminary engineering costs may include those incurred in selecting crossings to be improved, determining the type of improvement for each crossing, estimating the cost and preparing the required agreement.

(c) The written agreement between a State and a railroad shall contain as a minimum:

(1) Identification of each crossing location.

(2) Description of improvement and estimate of cost for each crossing location.

(3) Estimated schedule for completion of work at each location.

(d) Following programming, authorization and approval of the agreement under § 646.218(c), FHWA may authorize construction, including acquisition of warning device materials, with the condition that work at any particular location will not be undertaken until the proposed or executed State-railroad agreement under § 646.218(d) (2) is found satisfactory by FHWA and the final plans, specifications, and estimates are approved and with the condition that only material

actually incorporated into the project will be eligible for Federal participation.

(e) Work programmed and authorized under this simplified procedure should include only that which reasonably be expected to reach construction stage within one year be completed within two years after the initial authorization date.

**§ 646.220 Alternate Federal-State procedure.**

(a) On other than Interstate projects, an alternate procedure may be used, at the election of the State, for processing certain types of railroad-highway work. Under this procedure, the State highway agency acts in the relative position of FHWA for reviewing and approving projects.

(b) The scope of the State's approval authority under the alternate procedure includes all actions necessary to advance and complete the following types of railroad-highway work:

(1) All types of grade crossing improvements under § 646.206(a) (3).

(2) Minor adjustments to railroad facilities under § 646.206(b).

(c) The following types of work to be reviewed and approved in normal manner, as prescribed elsewhere in this subpart.

(1) All projects under § 646.206(a) and (2).

(2) Major adjustments to railroad facilities under § 646.206(b).

(d) Any State wishing to adopt an alternate procedure may file a formal application for approval by FHWA. The application must include the following:

(1) The State's written policies and procedures for administering and processing Federal-aid railroad-highway work, which make adequate provision with respect to all of the following:

(i) Compliance with the provisions of Title 23, U.S.C., Title 23 CFR, and other applicable Federal laws and Executive Orders.

(ii) Compliance with this subpart and 23 CFR, Part 140, Subpart I and 23 CFR Part 172.

(iii) For grade crossing safety improvements, compliance with the requirements of 23 CFR Part 924.

(2) A statement signed by the Chief Administrative Officer of the State highway agency certifying that:

- (i) The work will be done in accordance with the applicable provisions of the State's policies and procedures submitted under § 646.220(d)(1), and
  - (ii) Reimbursement will be requested only those costs properly attributable to the highway construction and eligible for Federal fund participation.
- (e) When FHWA has approved the alternate procedure, it may authorize a State to proceed in accordance with the State's certification, subject to the following conditions:

- (1) The work has been programmed.
- (2) The State submits in writing a request for such authorization which shall include a list of the improvements or adjustments to be processed under the alternate procedure, along with the best available estimate of cost.
- (3) The FHWA Regional Administrator may suspend approval of the certification procedure, where FHWA reviews close noncompliance with the certification. Federal-aid funds will not be eligible to participate in costs that do not qualify under § 646.220(d)(1).

FR 18059, Apr. 9, 1975; 40 FR 29712, May 15, 1975; 40 FR 31211, July 25, 1975; 42 FR 30635, June 17, 1977, as amended at 45 FR 20795, Mar. 31, 1980]

## **PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS**

### **Subpart A—Location and Hydraulic Design of Encroachments on Flood Plains**

- 650.101 Purpose.
- 650.103 Policy.
- 650.105 Definitions.
- 650.107 Applicability.
- 650.109 Public involvement.
- 650.111 Location hydraulic studies.
- 650.113 Only practicable alternative finding.
- 650.115 Design standards.
- 650.117 Content of design studies.

### **Subpart B—Erosion and Sediment Control on Highway Construction Projects**

- 650.201 Purpose.
- 650.203 Policy.
- 650.205 Definitions.

Sec.

- 650.207 Plans, specifications, and estimates.
- 650.209 Construction.

### **Subpart C—National Bridge Inspection Standards**

- 650.301 Application of standards.
- 650.303 Inspection procedures.
- 650.305 Frequency of inspections.
- 650.307 Qualifications of personnel.
- 650.309 Inspection report.
- 650.311 Inventory.

### **Subpart D—Highway Bridge Replacement and Rehabilitation Program**

- 650.401 Purpose.
- 650.403 Definition of terms.
- 650.405 Eligible projects.
- 650.407 Application for bridge replacement or rehabilitation.
- 650.409 Evaluation of bridge inventory.
- 650.411 Procedures for bridge replacement and rehabilitation projects.
- 650.413 Funding.
- 650.415 Reports.

### **Subpart E—Water Supply and Sewage Treatment at Safety Rest Areas**

- 650.501 Purpose.
- 650.503 Applicability.
- 650.505 Definitions.
- 650.507 Policy.
- 650.509 Site selection.
- 650.511 Water supply facilities.
- 650.513 Sewage treatment facilities.
- 650.515 Federal-aid participation in construction costs.

### **Subpart F—Concrete Bridge Decks**

- 650.601 Purpose.
- 650.603 Definitions.
- 650.605 Construction, reconstruction, and rehabilitation.
- 650.607 Maintenance.
- 650.609 Protective system.

### **Subpart G—Discretionary Bridge Candidate Rating Factor**

- 650.701 Purpose.
- 650.703 Eligible projects.
- 650.705 Application for discretionary bridge funds.
- 650.707 Rating factor.
- 650.709 Special considerations.

**AUTHORITY:** 23 U.S.C. 109(h), 116(d), 144, 315, 319(a), 319(b); 82 Stat. 829, sec. 26; sec. 6, 49 U.S.C. 1655; 49 CFR 1.48(b), unless otherwise noted.

**Subpart A—Location and Hydraulic Design of Encroachments on Flood Plains**

**AUTHORITY:** 23 U.S.C. 109(a), 315; 23 CFR 1.32; 49 CFR 1.48(b); E.O. 11988—Floodplain Management, May 24, 1977 (42 FR 26951); Department of Transportation Order 5650.2, April 26, 1979 (44 FR 24678).

**SOURCE:** 44 FR 67580, Nov. 26, 1979, unless otherwise noted.

**§ 650.101 Purpose.**

To prescribe Federal Highway Administration (FHWA) policies and procedures for the location and hydraulic design of highway encroachments on flood plains, including direct Federal highway projects administered by the FHWA.

**§ 650.103 Policy.**

It is the policy of the FHWA:

(a) To encourage a broad and unified effort to prevent uneconomic, hazardous or incompatible use and development of the Nation's flood plains,

(b) To avoid longitudinal encroachments, where practicable,

(c) To avoid significant encroachments, where practicable,

(d) To minimize impacts of highway agency actions which adversely affect base flood plains,

(e) To restore and preserve the natural and beneficial flood-plain values that are adversely impacted by highway agency actions,

(f) To avoid support of incompatible flood-plain development,

(g) To be consistent with the intent of the Standards and Criteria of the National Flood Insurance Program, where appropriate, and

(h) To incorporate "A Unified National Program for Floodplain Management" of the Water Resources Council into FHWA procedures.

**§ 650.105 Definitions.**

(a) "Action" shall mean any highway construction, reconstruction, rehabilitation, repair, or improvement undertaken with Federal or Federal-aid highway funds or FHWA approval.

(b) "Base flood" shall mean the flood or tide having a 1-percent chance of being exceeded in any given year.

(c) "Base flood plain" shall mean the area subject to flooding by the base flood.

(d) "Design Flood" shall mean the peak discharge, volume if appropriate, stage or wave crest elevation of the flood associated with the probability of exceedance selected for the design of a highway encroachment. By definition, the highway will not be inundated from the stage of the design flood.

(e) "Encroachment" shall mean any action within the limits of the base flood plain.

(f) "Floodproof" shall mean to design and construct individual buildings, facilities, and their sites to protect against structural failure, to keep water out or to reduce the effects of water entry.

(g) "Freeboard" shall mean the vertical clearance of the lowest structural member of the bridge superstructure above the water surface elevation of the overtopping flood.

(h) "Minimize" shall mean to reduce to the smallest practicable amount or degree.

(i) "Natural and beneficial flood-plain values" shall include but are not limited to fish, wildlife, plants, open space, natural beauty, scientific study, outdoor recreation, agriculture, aquaculture, forestry, natural moderation of floods, water quality maintenance and groundwater recharge.

(j) "Overtopping flood" shall mean the flood described by the probability of exceedance and water surface elevation at which flow occurs over the highway, over the watershed divide, through structure(s) provided for emergency relief.

(k) "Practicable" shall mean capable of being done within reasonable natural, social, or economic constraints.

(l) "Preserve" shall mean to avoid modification to the functions of the natural flood-plain environment or to maintain it as closely as practicable to its natural state.

(m) "Regulatory floodway" shall mean the flood-plain area that is reserved in an open manner by Federal, State or local requirements, i.e., unconfined or unobstructed either horizontally or vertically, to provide for the discharge of the base flood so that the cumulative increase in water surface

base elevation is no more than a designated amount (not to exceed 1 foot as established by the Federal Emergency Management Agency (FEMA) for administering the National Flood Insurance Program).

(n) "Restore" shall mean to reestablish a setting or environment in which the functions of the natural and beneficial flood-plain values adversely impacted by the highway agency action can again operate.

(o) "Risk" shall mean the consequences associated with the probability of flooding attributable to an encroachment. It shall include the potential for property loss and hazard to life during the service life of the highway.

(p) "Risk analysis" shall mean an economic comparison of design alternatives using expected total costs (construction costs plus risk costs) to determine the alternative with the least total expected cost to the public. It shall include probable flood-related costs during the service life of the facility for highway operation, maintenance, and repair, for highway-aggravated flood damage to other property, and for additional or interrupted highway travel.

(q) "Significant encroachment" shall mean a highway encroachment and direct support of likely base flood-plain development that would involve one or more of the following construction or flood-related impacts:

(1) A significant potential for interruption or termination of a transportation facility which is needed for emergency vehicles or provides a community's only evacuation route.

(2) A significant risk, or

(3) A significant adverse impact on natural and beneficial flood-plain uses.

(r) "Support base flood-plain development" shall mean to encourage, allow, serve, or otherwise facilitate additional base flood-plain development. Direct support results from an encroachment, while indirect support results from an action out of the base flood plain.

#### 50.107 Applicability.

(a) The provisions of this regulation shall apply to all encroachments and

to all actions which affect base flood plains, except for repairs made with emergency funds (23 CFR Part 668) during or immediately following a disaster.

(b) The provisions of this regulation shall not apply to or alter approvals or authorizations which were given by FHWA pursuant to regulations or directives in effect before the effective date of this regulation.

#### § 650.109 Public involvement.

(a) Procedures which have been established to meet the public involvement requirements of 23 CFR Parts 771 and 790 shall be used to provide opportunity for early public review and comment on alternatives which contain encroachments.

(b) Public notices issued in accordance with the above procedures shall make reference to significant encroachments which are contained in alternatives under consideration.

(c) Public hearing presentations shall include identification of encroachments.

[44 FR 67580, Nov. 26, 1979, as amended at 47 FR 47239, Oct. 25, 1982]

#### § 650.111 Location hydraulic studies.

(a) National Flood Insurance Program (NFIP) maps or information developed by the highway agency, if NFIP maps are not available, shall be used to determine whether a highway location alternative will include an encroachment.

(b) Location studies shall include evaluation and discussion of the practicability of alternatives to any longitudinal encroachments.

(c) Location studies shall include discussion of the following items, commensurate with the significance of the risk or environmental impact, for all alternatives containing encroachments and for those actions which would support base flood-plain development:

(1) The risks associated with implementation of the action,

(2) The impacts on natural and beneficial flood-plain values,

(3) The support of probable incompatible flood-plain development,

(4) The measures to minimize flood-plain impacts associated with the action, and

(5) The measures to restore and preserve the natural and beneficial flood-plain values impacted by the action.

(d) Location studies shall include evaluation and discussion of the practicability of alternatives to any significant encroachments or any support of incompatible flood-plain development.

(e) The studies required by § 650.111 (c) and (d) shall be summarized in environmental review documents prepared pursuant to 23 CFR Part 771.

(f) Local, State, and Federal water resources and flood-plain management agencies should be consulted to determine if the proposed highway action is consistent with existing watershed and flood-plain management programs and to obtain current information on development and proposed actions in the affected watersheds.

#### 650.113 Only practicable alternative finding.

(a) A proposed action which includes a significant encroachment shall not be approved unless the FHWA finds that the proposed significant encroachment is the only practicable alternative. This finding shall be included in the final environmental document (final environmental impact statement or finding of no significant impact) and shall be supported by the following information:

(1) The reasons why the proposed action must be located in the flood plain,

(2) The alternatives considered and why they were not practicable, and

(3) A statement indicating whether the action conforms to applicable State or local flood-plain protection standards.

[44 FR 67580, Nov. 26, 1979, as amended at 48 FR 29274, June 24, 1983]

#### § 650.115 Design standards.

(a) The design selected for an encroachment shall be supported by analyses of design alternatives with consideration given to capital costs and risks, and to other economic, engineering, social and environmental concerns.

(1) Consideration of capital costs and risks shall include, as appropriate, a risk analysis or assessment which includes:

(i) The overtopping flood or the flood, whichever is greater, or

(ii) The greatest flood which may flow through the highway drain structure(s), where overtopping is practicable. The greatest flood used in the analysis is subject to state-of-the-art capability to estimate the exceedance probability.

(2) The design flood for encroachments by through lanes of Interstate highways shall not be less than a flood with a 2-percent chance of being exceeded in any given year. No minimum design flood is specified for Interstate highway ramps and bridge roads or for other highways.

(3) Freeboard shall be provided, where practicable, to protect bridge structures from debris- and scour-related failure.

(4) The effect of existing flood control channels, levees, and reservoirs shall be considered in estimating peak discharge and stage for all floods considered in the design.

(5) The design of encroachments shall be consistent with standards established by the FEMA, State, local governmental agencies for administration of the National Flood Insurance Program for:

(i) All direct Federal highway actions, unless the standards are demonstrably inappropriate, and

(ii) Federal-aid highway actions where a regulatory floodway has been designated or where studies are underway to establish a regulatory floodway.

(b) Rest area buildings and related water supply and waste treatment facilities shall be located outside the base flood plain, where practicable. Rest area buildings which are located on the base flood plain shall be flood proofed against damage from the base flood.

(c) Where highway fills are to be used as dams to permanently impound water more than 50 acre-feet (6.17 x 10<sup>6</sup> cubic metres) in volume or 25 feet (7.62 metres) deep, the hydrologic, hydraulic, and structural design of the fills and appurtenant spillways shall have

the approval of the State or Federal agency responsible for the safety of dams or like structures within the State, prior to authorization by the Division Administrator to advertise for bids for construction.

#### § 650.201 Content of design studies.

- (a) The detail of studies shall be commensurate with the risk associated with the encroachment and with other economic, engineering, social or environmental concerns.
- (b) Studies by highway agencies shall contain:
  - (1) The hydrologic and hydraulic analysis and design computations,
  - (2) The analysis required by § 650.115(a), and
  - (3) For proposed direct Federal highway actions, the reasons, when applicable, why FEMA criteria (44 CFR 101.11, formerly 24 CFR 1910.3) are demonstrably inappropriate.
- (c) For encroachment locations, project plans shall show:
  - (1) The magnitude, approximate probability of exceedance and, at appropriate locations, the water surface elevations associated with the overtopping flood or the flood of § 650.115(a)(1)(ii), and
  - (2) The magnitude and water surface elevation of the base flood, if larger than the overtopping flood.

#### Part B—Erosion and Sediment Control on Highway Construction Projects

Source: 39 FR 36332, Oct. 9, 1974, unless otherwise noted.

#### § 650.201 Purpose.

The purpose of this subpart is to describe policies and procedures for control of erosion, abatement of erosion pollution and prevention of damage by sediment deposition from Federal-aid highway projections and projects under the direct control of Federal Highway Administration.

#### § 650.203 Policy.

It is the policy of the Federal Highway Administration (FHWA) that Federal-aid highways and highways constructed under the direct supervision of FHWA shall be located, designed,

constructed and operated according to standards that will minimize erosion and sediment damage to the highway and adjacent properties and abate pollution of surface and ground water resources.

#### § 650.205 Definitions.

- (a) Erosion control measures are installations used to inhibit dislodging of soil particles by water or wind.
- (b) Sediment control measures are installations used to inhibit dislodging of or remove settleable sediments from surface runoff.
- (c) Permanent erosion and sediment control measures are installations which remain in place and in service on completion of the construction project.
- (d) Temporary erosion or sediment control measures are installations used on an interim basis during construction.
- (e) Pollutants are substances, including sediment, which cause deterioration of water quality when added to surface or ground waters in sufficient quantity.

#### § 650.207 Plans, specifications and estimates.

- (a) Emphasis shall be placed on erosion control in the preparation of plans, specifications and estimates.
- (b) All reasonable steps shall be taken to insure that highway project designs for the control of erosion and sedimentation and the protection of water quality comply with applicable standards and regulations of other agencies.

#### § 650.209 Construction.

- (a) Permanent erosion and sediment control measures shall be installed at the earliest practicable time consistent with good construction practices.
- (b) Temporary erosion and sediment control measures shall be coordinated with permanent measures to assure economical, effective and continuous control throughout the construction phase. Temporary measures shall not be constructed for expediency in lieu of permanent measures specified in the contract.

(c) Erosion and sediment control measures shall be adequately maintained to perform their intended function during construction of the project.

(d) Erosion and sediment control measures necessary because of contractor negligence, carelessness or failure to install contract measures as scheduled shall be installed at no cost to Federal-aid funds.

(e) Pollutants used during highway construction or operation and material from sediment traps shall not be stockpiled or disposed of in a manner which makes them susceptible to being washed into any watercourse by runoff or high water. No pollutants shall be deposited or disposed of in watercourses.

### Subpart C—National Bridge Inspection Standards

SOURCE: 36 FR 7851, Apr. 27, 1971, unless otherwise noted. Redesignated at 39 FR 10430, Mar. 20, 1974.

#### § 650.301 Application of standards.

The National Bridge Inspection Standards in this part apply to all structures defined as bridges located on all public roads. In accordance with the AASHTO (American Association of State Highway and Transportation Officials) Highway Definitions Manual, a "bridge" is defined as a structure including supports erected over a depression or an obstruction, such as water, highway, or railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

(23 U.S.C. 144, 116(d), 315; 49 U.S.C. 1655; 23 CFR 1.48(b))

[44 FR 25435, May 1, 1979]

#### § 650.303 Inspection procedures.

(a) Each highway department shall include a bridge inspection organization capable of performing inspections, preparing reports, and determining ratings in accordance with the provisions of the AASHTO Manual and the Standards contained herein.

(b) Bridge inspectors shall meet minimum qualifications stated in § 650.307.

(c) Each structure required to be inspected under the Standards shall be rated as to its safe load carrying capacity in accordance with section 4 of the AASHTO Manual. If it is determined under this rating procedure that the maximum legal load under State law exceeds the load permitted under the Operating Rating, the bridge must be posted in conformity with the AASHTO Manual or in accordance with State law.

(d) Inspection records and bridge inventories shall be prepared and maintained in accordance with the Standards.

(23 U.S.C. 144, 116(d), 315; 49 U.S.C. 1655; 23 CFR 1.48(b))

[36 FR 7851, Apr. 27, 1971. Redesignated at 39 FR 10430, Mar. 20, 1974, and amended at 44 FR 25435, May 1, 1979]

#### § 650.305 Frequency of inspections.

(a) Each bridge is to be inspected at regular intervals not to exceed 2 years.

The "AASHTO Manual" referred to in this part is the "Manual for Maintenance Inspection of Bridges 1978" published by the American Association of State Highway and Transportation Officials. A copy of the Manual may be examined during non-business hours at the office of each Division Administrator of the Federal Highway Administration, at the office of each Regional Federal Highway Administrator, and at the Washington Headquarters of the Federal Highway Administration. The addresses of those document inspection facilities are set forth in Appendix D to Part 7 of the regulations of the Office of the Secretary (49 CFR Part 7). In addition, a copy of the Manual may be secured upon payment in advance by writing to the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., Suite 200, Washington, D.C. 20001.

accordance with section 2.3 of the AASHTO Manual.

b) The depth and frequency to which bridges are to be inspected will depend on such factors as age, traffic characteristics, state of maintenance, known deficiencies. The evaluation of these factors will be the responsibility of the individual in charge of the inspection program.

FR 7851, Apr. 27, 1971. Redesignated at R 10430, Mar. 20, 1974, and amended at R 29590, Aug. 16, 1974]

**§ 650.307 Qualifications of personnel.**

a) The individual in charge of the organizational unit that has been delegated the responsibilities for bridge inspection, reporting, and inventory must possess the following minimum qualifications:

- Be a registered professional engineer; or
- Be qualified for registration as a professional engineer under the laws of the State; or

• Have a minimum of 10 years experience in bridge inspection assignments in a responsible capacity and have completed a comprehensive training course based on the "Bridge Inspector's Training Manual," which has been developed by a joint Federal task force.

b) An individual in charge of a bridge inspection team shall possess the following minimum qualifications:

- Have the qualifications specified in paragraph (a) of this section; or
- Have a minimum of 5 years experience in bridge inspection assignments in a responsible capacity and have completed a comprehensive training course based on the "Bridge Inspector's Training Manual," which has been developed by a joint Federal task force.

23 U.S.C. 144, 116(d), 315; 49 U.S.C. 1655; 23 CFR 1.48(b)

FR 7851, Apr. 27, 1971. Redesignated at R 10430, Mar. 20, 1974, and amended at R 25435, May 1, 1979]

The "Bridge Inspector's Training Manual" may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

**§ 650.309 Inspection report.**

The findings and results of bridge inspections shall be recorded on standard forms. The data required to complete the forms and the functions which must be performed to compile the data are contained in section 3 of the AASHTO Manual.

[39 FR 29590, Aug. 16, 1974]

**§ 650.311 Inventory.**

(a) Each State shall prepare and maintain an inventory of all bridge structures subject to the Standards. Under these Standards, certain structure inventory and appraisal data must be collected and retained within the various departments of the State organization for collection by the Federal Highway Administration as needed. A tabulation of this data is contained in the structure inventory and appraisal sheet distributed by the Federal Highway Administration as part of the Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges (Coding Guide) in January of 1979. Reporting procedures have been developed by the Federal Highway Administration.

(b) All bridges subject to these Standards shall be inventoried by December 31, 1980, as required by section 124(a), and (c) of the Surface Transportation Assistance Act of 1978. Newly completed structures or any modification of existing structures which would alter previously recorded data on the inventory forms shall be entered in the State's records within 90 days.

(23 U.S.C. 144, 116(d), 315; 49 U.S.C. 1655; 23 CFR 1.48(b))

[44 FR 25435, May 1, 1979]

**Subpart D—Highway Bridge Replacement and Rehabilitation Program**

**SOURCE:** 44 FR 15665, Mar. 15, 1979, unless otherwise noted.

**§ 650.401 Purpose.**

The purpose of this regulation is to prescribe policies and outline procedures for administering the Highway Bridge Replacement and Rehabilitation



tion Program in accordance with 23 U.S.C. 144.

§ 650.403 Definition of terms.

As used in this regulation:

(a) *Bridge*. A structure, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of the openings for multiple boxes; it may include multiple pipes where the clear distance between openings is less than half of the smaller contiguous opening.

(b) *Sufficiency rating*. The numerical rating of a bridge based on its structural adequacy and safety, essentiality for public use, and its serviceability and functional obsolescence.

(c) *Rehabilitation*. The major work required to restore the structural integrity of a bridge as well as work necessary to correct major safety defects.

§ 650.405 Eligible projects.

(a) *General*. Deficient highway bridges on all public roads may be eligible for replacement or rehabilitation.

(b) *Types of projects which are eligible*. The following types of work are eligible for participation in the Highway Bridge Replacement and Rehabilitation Program (HBRRP), hereinafter known as the bridge program.

(1) *Replacement*. Total replacement of a structurally deficient or functionally obsolete bridge with a new facility constructed in the same general traffic corridor. A nominal amount of approach work, sufficient to connect the new facility to the existing roadway or to return the gradeline to an attainable touchdown point in accordance with good design practice is also eligible. The replacement structure must meet the current geometric, construction and structural standards required for the types and volume of projected traffic on the facility over its design life.

(2) *Rehabilitation*. The project requirements necessary to perform the

major work required to restore structural integrity of a bridge as as work necessary to correct major safety defects are eligible except noted under ineligible work. Bridge be rehabilitated both on or off the A System shall, as a minimum, conform with the provisions of 23 Part 625, Design Standards for Federal-aid Highways, for the class of way on which the bridge is a part.

(c) *Ineligible work*. Except as otherwise prescribed by the Administrator, the costs of long approach fills, cutways, connecting roadways, interchanges, ramps, and other external earth structures, when constructed beyond the attainable touchdown point, are not eligible under the program.

§ 650.407 Application for bridge replacement or rehabilitation.

(a) Agencies participate in the program by conducting bridge inspections and submitting Structure Inventory and Appraisal (SI&A) sheets and inspection data. Federal and local governments supply SI&A sheets to the State agency for review and processing. The State is responsible for submitting the six computer format or tapes containing all project SI&A sheet bridge information through the Division Administrator to the Federal Highway Administration (FHWA) for processing. These requirements are prescribed in 23 CFR 650.309 and 650.311, the National Bridge Inspection Standards.

(b) Inventory data may be submitted as available and shall be submitted such additional times as the FHWA may request.

(c) Inventory data on bridges that have been strengthened or repaired to eliminate deficiencies, or those that have been replaced or rehabilitated using bridge replacement and/or other funds, must be revised in the inventory through data submission.

(d) The Secretary may, at the request of a State, inventory bridges on and off the Federal-aid system, and historic significance.

[44 FR 15665, Mar. 15, 1979, as amended; 44 FR 72112, Dec. 13, 1979]

## § 650.409 Evaluation of bridge inventory.

(a) *Sufficiency rating of bridges.* Upon receipt and evaluation of the bridge inventory, a sufficiency rating will be assigned to each bridge by the Secretary in accordance with the approved AASHTO<sup>1</sup> sufficiency rating formula. The sufficiency rating will be used as a basis for establishing eligibility and priority for replacement or rehabilitation of bridges; in general the higher the rating, the higher the priority.

(b) *Selection of bridges for inclusion in State program.* After evaluation of the inventory and assignment of sufficiency ratings, the Secretary will provide the State with a selection list of bridges within the State that are eligible for the bridge program. From that list or from previously furnished selection lists, the State may select bridge projects.

## § 650.411 Procedures for bridge replacement and rehabilitation projects.

(a) Consideration shall be given to projects which will remove from service highway bridges most in danger of failure.

(b) *Submission and approval of projects.* (1) Bridge replacement or rehabilitation projects shall be submitted by the State to the Secretary in accordance with 23 CFR Part 630 Subpart A Federal-Aid Programs, Approval and Authorization.

(2) Funds apportioned to a State shall be made available throughout the State on a fair and equitable basis.

(3) Each approved project will be designed, constructed, and inspected in acceptance in the same manner as other projects on the system on which the project is located. It shall be the responsibility of the State agency to properly maintain, or cause to be properly maintained, any project constructed under this bridge program. The State highway agency shall enter into a formal agreement for maintenance with appropriate local government officials in cases where an eligi-

ble project is located within and is under the legal authority of such a local government.

(2) Whenever a deficient bridge is replaced or its deficiency alleviated by a new bridge under the bridge program, the deficient bridge shall either be dismantled or demolished or its use limited to the type and volume of traffic the structure can safely service over its remaining life. For example, if the only deficiency of the existing structure is inadequate roadway width and the combination of the new and existing structure can be made to meet current standards for the volume of traffic the facility will carry over its design life, the existing bridge may remain in place and be incorporated into the system.

[44 FR 15665, Mar. 15, 1979, as amended at 44 FR 72112, Dec. 13, 1979]

## § 650.413 Funding.

(a) Funds authorized for carrying out the Highway Bridge Replacement and Rehabilitation Program are available for obligation at the beginning of the fiscal year for which authorized and remain available for expenditure for the same period as funds apportioned for projects on the Federal-aid primary system.

(b) The Federal share payable on account of any project carried out under 23 U.S.C. 144 shall be 80 percent of the eligible cost.

(c) Not less than 15 percent nor more than 35 percent of the apportioned funds shall be expended for projects located on public roads, other than those on a Federal-aid system. The Secretary after consultation with State and local officials may, with respect to a State, reduce the requirement for expenditure for bridges not on a Federal-aid system when he determines that such State has inadequate needs to justify such expenditure.

## § 650.415 Reports.

The Secretary must report annually to the Congress on projects approved and current inventories together with recommendations for further improvements.

<sup>1</sup> American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW, Washington, D.C. 20001.

**Subpart E—Water Supply and Sewage Treatment at Safety Rest Areas**

**AUTHORITY:** 23 U.S.C. 109(h), 315, 319; 49 CFR 1.48(b); Pub. L. 97-134, 95 Stat. 1699.

**SOURCE:** 49 FR 1486, Jan. 12, 1984, unless otherwise noted.

**§ 650.501 Purpose.**

The purpose of this regulation is to prescribe Federal Highway Administration (FHWA) policies and procedures for providing safe and adequate water supply and sewage treatment facilities at safety rest areas constructed with Federal-aid funds.

**§ 650.503 Applicability.**

The provisions of this regulation shall apply to safety rest areas constructed with Federal-aid funds with existing or proposed drinking water supply and sewage treatment facilities.

**§ 650.505 Definitions.**

(a) *Designated sole source aquifer*—an aquifer, as established in 40 CFR Part 149 pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f, 300h-3(e), which represents the major source of a community's water supply.

(b) *Effluent limitations*—the standards governing the discharge quality of treated sewage as established by the Environmental Protection Agency (EPA) in 40 CFR Part 133 pursuant to the Clean Water Act, 33 U.S.C. 1311.

(c) *Federal drinking water standards*—the standards for assessing the physical, chemical, biological, and radiological characteristics of water for drinking as established by EPA in 40 CFR Part 141 pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f, which delineate the maximum permissible level of a contaminant in water provided by a public water system.

(d) *National Pollutant Discharge Elimination System (NPDES)*—the regulatory permit program that controls the quality of treated sewage discharged from sewage treatment plants as established in 40 CFR Part 125 pursuant to the Clean Water Act, 33 U.S.C. 1342.

(e) *Receiving water quality standards*—the standards for maintaining or improving water quality in bodies of

water and streams as set forth in the Clean Water Act, 33 U.S.C. 1313, 40 CFR Part 120—Water Quality Standards.

(f) *Safety rest area*—a roadside facility safely removed from the travel way with parking and such facilities for the motorist deemed necessary for rest, relaxation, comfort and information. The term is synonymous with "rest and recreation areas" as prescribed in 23 U.S.C. 319.

**§ 650.507 Policy.**

It is the policy of FHWA:

(a) That drinking water supply systems shall be designed, constructed and maintained to provide water which meets drinking water standards established by EPA in 40 CFR Part 141 promulgated pursuant to the Drinking Water Act, 42 U.S.C. 300f, as amended, or State standards whichever are more stringent;

(b) That onsite sewage treatment facilities shall be designed, constructed and operated to meet:

(1) Effluent limitations established by EPA in 40 CFR Part 133 promulgated pursuant to the Clean Water Act, 33 U.S.C. 1311 *et seq.*, as amended, or State standards, whichever are more stringent,

(2) The receiving water quality standards, and

(3) Requirements for any sole source aquifer as established in 40 CFR Part 149 promulgated pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f, as amended, or State standards whichever are more stringent; and

(c) That sewage systems not covered by paragraph (b) of this section shall be designed, constructed, and operated to meet the applicable State standards.

**§ 650.509 Site selection.**

Adequate information shall be obtained in the site selection process to insure that the following conditions can be met:

(a) The availability of a drinking water supply source in adequate quantity and quality, including water from public water supply systems.

(b) The capability to dispose of sewage generated by the safety rest

reas in a manner consistent with these regulations, including any potential impact to sole source aquifers. Where a public sewage system is to be utilized, the system's ability to adequately treat and dispose of the sewage shall be ascertained.

#### 650.511 Water supply facilities.

The following factors shall apply to the design of water supply facilities for safety rest areas:

- (a) In the interest of conserving energy and underground water resources, reduced-flow fixtures shall be considered for the safety rest area building.
- (b) Water treatment shall be accomplished at the site as may be necessary to meet drinking water standards.
- (c) Onsite storage, auxiliary supplies and recirculating units shall be provided as may be necessary to obtain a water supply that will meet peak demands.
- (d) The safety rest area's drinking water supply, regardless of source, shall be monitored in accordance with the regulatory agency standards.

#### 650.513 Sewage treatment facilities.

The following factors shall apply to the design of sewage treatment facilities for safety rest areas:

- (a) The permit required under the National Pollution Discharge Elimination System (NPDES) shall be obtained prior to approval of Plans, Specifications and Estimate (PS&E) authorization for the advertisement of bids.
- (b) Sewage treatment shall be accomplished at the site as may be necessary to meet effluent limitations. Effluent shall be monitored in accordance with the standards established by the NPDES permit.

#### 650.515 Federal-aid participation in construction costs.

- (1) *New safety rest areas.* (1) Federal-aid projects may be approved for construction of drinking water supply and sewage treatment facilities that will meet the requirements of 650.507.
- (2) Federal-aid participation in the cost to connect to public facilities may include participation in the State highway agency's share of the cost to

construct, expand or improve the public facility to assure adequate water supply or sewage treatment. Participation in amounts expended for capital improvements to the public facility will be limited to the lesser of:

(i) The appropriate pro rata share of the highway project's contribution to the need for the improvements;

(ii) The present worth of the capital investment, maintenance and operation costs of an onsite facility.

(3) Federal-aid Interstate (FAI) construction funds may be used for safety rest areas on the Interstate System if the work is necessary to replace existing similar services on gap sections or as part of the approved major upgrading of an incorporated segment. The FAI construction funds are limited to costs for speed change lanes, entrance and exit roadways, circulatory roads, parking areas, walkways, curbs, lighting installation, replacement of other existing similar services, and corresponding preliminary engineering and right-of-way costs.

(4) For Interstate projects, the work described in paragraphs (a) (1) and (2) of this section that is not eligible for FAI construction funds shall be eligible for funding with Interstate 4R funds or primary funds. This would include the costs for both construction and completion of improvement of safety rest areas and the costs of any upgrading of water supply facilities, sewage treatment facilities or provisions to serve the handicapped.

(b) *Existing safety rest areas*—(1) *Quantity requirements.* Federal-aid funds other than FAI construction funds may be used to expand or improve water supply and sewage systems at existing safety rest areas without regard for the design year for the original construction.

(2) *Quality requirements.* (i) The use of Federal-aid funds other than FAI construction funds may be approved to improve or replace existing water supply systems which fail to meet existing or new and more stringent drinking water quality standards imposed pursuant to Federal or State law.

(ii) Where safety rest area sewage effluent quality does not meet effluent limitations, the use of Federal-aid

funds other than FAI construction funds in sewage treatment facility replacement or improvements to meet those standards may be authorized for projects where the construction of these facilities was authorized prior to the date of this regulation, subject to the following:

(A) Evidence of a failure of existing treatment facility to meet effluent standards established by field investigation and appropriate testing of influent and effluent samples.

(B) Failure to meet effluent standards is not a result of inadequate maintenance or plant operation. If plant operation is deficient, such steps as increased operator training or certification should be accomplished.

(C) Receipt of an engineering report describing the characteristics, volumes, and rates of sewage flows. The report should also contain design computations and a discussion of modifications required to meet the standards.

(c) *Procedures.* Project proposals which incorporate sophisticated processes or involve difficult design problems should be forwarded to the Regional Federal Highway Administrator for review and comment. The Washington Headquarters office is available for consultation upon request.

## Subpart F—Concrete Bridge Decks

**AUTHORITY:** 23 U.S.C. 109(a), 144, 315; 49 CFR 1.48(b).

**SOURCE:** 49 FR 1181, Jan. 10, 1984, unless otherwise noted.

### § 650.601 Purpose.

The purpose of this subpart is to prescribe policies and procedures for the construction, rehabilitation, and reconstruction of concrete bridge decks with special emphasis on protective systems within the existing controls on the expenditures of Federal-aid funds.

### § 650.603 Definitions.

(a) *Construction* means the initial construction of any specific bridge deck.

(b) *Maintenance* means routine or incidental work necessary to keep a bridge deck functioning in a safe and efficient manner.

(c) *Protective system* means a system used to protect bridge decks from deterioration induced by highway deicing chemicals, salt water, or other hostile environments.

(d) *Reconstruction* means the restoration of the structural integrity of concrete bridge deck by complete removal and replacement of the existing deteriorated bridge deck.

(e) *Rehabilitation* means the work necessary to restore the structural integrity of portions of the original bridge deck as well as the installation of a deck protective system.

### § 650.605 Construction, reconstruction, and rehabilitation.

The following policies are established for all bridge decks to be constructed, rehabilitated, or reconstructed with Federal-aid funds.

(a) *Standard specifications.* States shall adopt design and construction specifications which are equal to or better than those specified in 23 CFR Part 625, Design Standards for Highway Construction. Exceptions. Approval in accordance with 23 CFR 625.5 and without delegated authority provided FHWA may be given to designs on project basis which do not conform to the minimum design criteria set forth in 23 CFR 625.3.

(b) *Protective system.* When a bridge deck is likely to be exposed to potentially damaging applications of deicing chemicals, salt water, or other hostile environment, a cost effective protective system is required.

(1) Approval of the type of protective system is made in accordance with the provisions of § 650.609.

(2) The installation of a protective system not contemplated when the bridge deck was initially constructed is not eligible for Interstate construction funds.

(3) The installation of a protective system is eligible for Interstate construction funds or from another appropriate category.

(c) *Eligible work.* Reconstruction and rehabilitation procedures necessary to assure acceptable performance of existing structures are set forth below and are eligible for Federal-aid participation from the appropriate

category. Reconstruction and rehabilitation shall include all work required to assure satisfactory performance of the concrete deck, as well as the supporting superstructure and substructure units.

(1) This may include items such as the removal of existing overlays, removal and replacement of all deteriorated components or the complete removal and replacement of the entire bridge deck if necessary.

(2) This work may also include repair or removal and replacement of deteriorated concrete curbs, sidewalks, curbs, as well as rail, deck joints, parapets, or similar incidental items which are associated with proper functional restoration of the structure.

(3) Consistent with 23 CFR Part 924, safety improvements should be undertaken with the above described work when such improvements eliminate an established hazardous condition. Such safety improvements may include widening, elimination of hazardous walks, replacement of substandard safety hardware, removal of hazardous fixed objects or installation of an energy absorbing barrier system, and any other features that are consistent with current safety standards.

#### § 650.701 Maintenance.

The following policies are established for the use of Federal-aid funds related to maintenance activities.

(a) Maintenance work is considered an obligation of the State and is not eligible for Federal-aid funding.

(b) Spot patching of a bridge deck is maintenance unless it is done as work incidental to the rehabilitation or reconstruction of the concrete bridge deck.

(c) The resurfacing of a bridge deck is considered maintenance when such work only restores the general condition of the riding surface and will not significantly affect the structural integrity and durability characteristics of the original deck.

#### § 650.609 Protective system.

In view of the recognized need for protective systems, the following policies have been established for Federal-aid participation.

(a) The contract plans, specifications, and estimate (PS&E) for the construction, rehabilitation, and/or reconstruction of all concrete bridge decks that are likely to be subjected to potentially damaging applications of deicing salts, saltwater, or other hostile environments shall provide for durable concrete as well as a protective system that is cost effective.

(b) *Federal-aid approval.* Approval of the protective system will be required as part of the approval of the PS&E.

(1) Protective systems which, based on local field experience, have not been demonstrated to be cost effective must be considered experimental. These systems are to be surveyed and evaluated on an experimental basis under the Federal Highway Administration (FHWA) Experimental Projects Program.

(2) Proprietary products, when used as bridge deck protective systems, must be used in accordance with Federal regulations on the use of proprietary products.

### Subpart G—Discretionary Bridge Candidate Rating Factor

**AUTHORITY:** Sec. 161, Pub. L. 97-424, 96 Stat. 2097; 23 U.S.C. 144, 315; 49 CFR 1.48(b).

**SOURCE:** 48 FR 52296, Nov. 17, 1983, unless otherwise noted.

#### § 650.701 Purpose.

The purpose of this regulation is to describe a rating factor used as part of a selection process of allocation of discretionary bridge funds made available to the Secretary of Transportation under 23 U.S.C. 144.

#### § 650.703 Eligible projects.

(a) Deficient highway bridges on Federal-aid highway system roads may be eligible for allocation of discretionary bridge funds to the same extent as they are for bridge funds apportioned under 23 U.S.C. 144, provided that the total project cost for a discretionary bridge candidate is at least \$10 million or twice the amount of 23 U.S.C. 144 funds apportioned to the State during

the fiscal year for which funding for the candidate bridge is requested.

(b) After the effective date of this regulation for the discretionary bridge candidate rating factor, only candidate bridges not previously selected with a computed rating factor of 100 or less will be eligible for consideration.

**§ 650.705 Application for discretionary bridge funds.**

Each year through its field offices, the FHWA will issue an annual call for discretionary bridge candidate submittals including updates of previously submitted but not selected projects.

Each State is responsible for submitting such data as required for candidate bridges. Data requested will include structure number, funds needed by fiscal year, total project cost, current average daily truck traffic and a narrative describing the existing bridge, the proposed new or rehabilitated bridge and other relevant facts which the State believes may warrant special consideration.

**§ 650.707 Rating factor.**

(a) The following formula is to be used in the selection process for rating discretionary bridge candidates:

$$\text{Rating Factor (RF)} = \frac{\text{SR}}{\text{D}} \times \frac{\text{TPC}}{\text{ADT}} \times \left[ 1 + \frac{\text{Unobligated HBRRP Balance}}{\text{Total HBRRP Funds Received}} \right]$$

The lower the rating factor, the higher the priority for selection and funding.

(b) The terms in the rating factor are defined as follows:

SR is Sufficiency Rating computed as illustrated in Appendix A of the Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges, USDOT/FHWA (latest edition); (If SR is less than 1.0, use SR=1.0);

ADT is Average Daily Traffic in thousands taking the most current value from the national bridge inventory data;

ADTT is Average Daily Truck Traffic in thousands (Pick up trucks and light delivery trucks not included);

For load posted bridges, the ADTT furnished should be that which would use the bridge if traffic were not restricted.

The ADTT should be the annual average volume, not peak or seasonal.

D is Defense Highway System Status

D=1 if not on defense highway

D=1.5 if bridge carries a designated defense highway

The last term of the rating factor expression includes the State's unobligated balance of funds received under 23 U.S.C. 144 as of June 30 preceding the date of calculation, and the total funds received under 23 U.S.C. 144 for the last four fiscal years ending with the most recent fiscal year of the FHWA's annual call for discretionary bridge candidate submittals; (if unobligated

HBRRP balance is less than \$10 million zero balance);

TPC is Total Project Cost in millions of dollars;

HBRRP is Highway Bridge Replacement and Rehabilitation Program;

ADT is ADT plus ADTT.

(c) In order to balance the relative importance of candidate bridges with very low (less than one) sufficiency ratings and very low ADT's against candidate bridges with high ADT's, the minimum sufficiency rating will be 1.0. If the computed sufficiency rating for a candidate bridge is less than 1.0, use 1.0 in the rating factor formula.

(d) If the unobligated balance of HBRRP funds for the State is less than \$10 million, the HBRRP modifier is 1.0. This will limit the effect of the modifier on those States with small apportionments or those who may be accumulating funds to finance a major bridge.

[48 FR 52296, Nov. 17, 1983; 48 FR 53411, Nov. 28, 1983]

**§ 650.709 Special considerations.**

(a) The selection process for new discretionary bridge projects will be based upon the rating factor priority ranking. However, although not specified

ally included in the rating factor formula, special consideration will be given to bridges that are closed to all traffic or that have a load restriction less than 10 tons. Consideration will also be given to bridges with other unique situations, and to bridge candidates in States which have not previously been allocated discretionary bridge funds.

b) The need to administer the program from a balanced national perspective requires that the special cases forth in paragraph (a) of this section and other unique situations be considered in the discretionary bridge bid evaluation process.

c) Priority consideration will be given to the continuation and completion of bridge projects previously funded with discretionary bridge funds.

## § 652—PEDESTRIAN AND BICYCLE ACCOMMODATIONS AND PROJECTS

- Purpose.
- Definitions.
- Policy.
- Eligibility.
- Federal participation.
- 1 Planning.
- 2 Design and construction criteria.

STATUTE: 23 U.S.C. 109, 217, 315, 401(XF); 49 CFR 1.48(b).

REG: 49 FR 10662, Mar. 22, 1984, unless otherwise noted.

### 1 Purpose.

To provide policies and procedures relating to the provision of pedestrian and bicycle accommodations on Federal projects, and Federal participation in the cost of these accommodations and projects.

### 2 Definitions.

**Bicycle.** A vehicle having two or more wheels, propelled solely by human power, upon which any person may ride.

**Bikeway.** Any road, path, or way in any manner is specifically designated as being open to bicycle traffic, regardless of whether such facility is designated for the exclusive use of bicycles or are to be shared with other transportation modes.

(c) **Bicycle Path (Bike Path).** A bikeway physically separated from motorized vehicular traffic by an open space or barrier and either within the highway right-of-way or within an independent right-of-way.

(d) **Bicycle Lane (Bike Lane).** A portion of a roadway which has been designated by striping, signing and pavement markings for the preferential or exclusive use of bicyclists.

(e) **Bicycle Route (Bike Route).** A segment of a system of bikeways designated by the jurisdiction having authority with appropriate directional and informational markers, with or without a specific bicycle route number.

(f) **Shared Roadway.** Any roadway upon which a bicycle lane is not designated and which may be legally used by bicycles regardless of whether such facility is specifically designated as a bikeway.

(g) **Pedestrian Walkway or Walkway.** A continuous way designated for pedestrians and separated from the through lanes for motor vehicles by space or barrier.

(h) **Highway Construction Project.** A project financed in whole or in part with Federal-aid or Federal funds for the construction, reconstruction or improvement of a highway or portions thereof, including bridges and tunnels.

(i) **Independent Bicycle Construction Project (Independent Bicycle Project).** A project designation used to distinguish a bicycle facility constructed independently and primarily for use by bicyclists from an improvement included as an incidental part of a highway construction project.

(j) **Independent Pedestrian Walkway Construction Project (Independent Walkway Project).** A project designation used to distinguish a walkway constructed independently and solely as a pedestrian walkway project from a pedestrian improvement included as an incidental part of a highway construction project.

(k) **Incidental Bicycle or Pedestrian Walkway Construction Project (Incidental Feature).** One constructed as an incidental part of a highway construction project.

(l) **Nonconstruction Bicycle Project.** A bicycle project not involving physi-



cal construction which enhances the safe use of bicycles for transportation purposes.

(m) *Snowmobile*. A motorized vehicle solely designed to operate on snow or ice.

§ 652.5 Policy.

The safe accommodation of pedestrians and bicyclists should be given full consideration during the development of Federal-aid highway projects, and during the construction of such projects. The special needs for the elderly and the handicapped shall be considered in all Federal-aid projects that include pedestrian facilities. Where current or anticipated pedestrian and/or bicycle traffic presents a potential conflict with motor vehicle traffic, every effort shall be made to minimize the detrimental effects on all highway users who share the facility. On highways without full control of access where a bridge deck is being replaced or rehabilitated, and where bicycles are permitted to operate at each end, the bridge shall be reconstructed so that bicycles can be safely accommodated when it can be done at a reasonable cost. Consultation with local groups of organized bicyclists is to be encouraged in the development of bicycle projects.

§ 652.7 Eligibility.

(a) Independent bicycle projects, incidental bicycle projects, and nonconstruction bicycle projects must be principally for transportation rather than recreational use and must meet the project conditions for authorization where applicable.

(b) The implementation of pedestrian and bicycle accommodations may be authorized for Federal-aid participation as either incidental features of highways or as independent projects where all of the following conditions are satisfied.

(1) The safety of the motorist, bicyclist, and/or pedestrian will be enhanced by the project.

(2) The project is initiated or supported by the appropriate State highway agency(ies) and/or the Federal land management agency. Projects are to be located and designed pursuant to an overall plan, which provides due

consideration for safety and continuous routes.

(3) A public agency has formally agreed to:

(i) Accept the responsibility for operation and maintenance of the facility,

(ii) Ban all motorized vehicles other than maintenance vehicles, or snowmobiles where permitted by State local regulations, from pedestrian walkways and bicycle paths, and

(iii) Ban parking, except in the case of emergency, from bicycle lanes are contiguous to traffic lanes.

(4) The estimated cost of the project is consistent with the anticipated benefits to the community.

(5) The project will be designed to meet substantial conformity with the official design criteria. (See § 652.9)

[49 FR 10662, Mar. 22, 1984; 49 FR Apr. 13, 1984]

§ 652.9 Federal participation.

(a) Independent walkway projects and independent bicycle projects and construction bicycle projects shall be financed with 100 percent Federal primary, secondary or urban highway funds, provided the total amount obligated for all such projects in any State in any fiscal year does not exceed \$4.5 million of Federal funds or a lesser amount apportioned by the Federal Highway Administrator to avoid exceeding the annual million cost limitation on projects for all States in a fiscal year. The Federal Highway Administrator may, upon application, waive this limitation for a State for any fiscal year. This limitation also applies to projects funded under § 652.9(d). This limitation does not apply to projects of the type described in § 652.9(c). FHWA Offices of Direct Federal Programs and Engineering will coordinate projects of the type described in § 652.9(d) to ensure that the annual cost limitations will not be exceeded.

(b) Specific eligibility requirements for Federal-aid participation in independent and nonconstruction projects are:

(1) An independent walkway project must be constructed on highway right-of-way or easement, or right-of-way

required for this purpose. Independent walkway projects may be constructed separately or in conjunction with a Federal-aid highway construction project. Where an independent walkway project is located away from the Federal-aid highway right-of-way, it must serve pedestrians who would normally desire to use the Federal-aid facility.

(b) An independent bicycle project may include the acquisition of land needed for the facility, or such projects may be constructed on existing highway right-of-way or easement required for this purpose. Independent bicycle projects may include construction of bicycle lanes, paths, shelters, bicycle parking facilities and roadway and bridge work necessary to accommodate bicyclists.

(c) Nonconstruction bicycle projects must be related to the safe use of bicycles for transportation, and may include safety educational material and maps for safe bicycle transportation purposes. Nonconstruction bicycle projects shall not include salaries for administration, law enforcement, maintenance and similar items needed to operate transportation networks and programs, but may include salaries of staff or consultants for development of specific nonconstruction projects.

Bicycle and pedestrian accommodations may also be constructed as incidental features of highway construction projects. These incidental features may be financed with the same source of Federal-aid funds, including those of the type described in § 652.13(d) (except Interstate construction funds) and at the same Federal-aid rate payable as a basic highway project. These accommodations are subject to the funding limitations for independent walkway, independent bicycle and nonconstruction bicycle projects. In the case of the Interstate construction projects, Federal-aid Interstate construction funds may not be used to replace existing facilities that would be interrupted by construction of the project, or to mitigate significant environmental impacts. Interstate 4R funds provided by 23 U.S.C. 6(b)(5)(B) may be used only for incidental features. As incidental features,

these accommodations must be part of a highway improvement and must be located within the right-of-way of the highway, including land acquired under 23 U.S.C. 319 (Scenic Enhancement Program).

(d) Funds authorized for Federal lands highways (forest highways, public lands highways, park roads, parkways, and Indian reservation roads which are public roads), forest development roads and trails (i.e., roads or trails under the jurisdiction of the Forest Service), and public lands development roads and trails (i.e., roads or trails which the Secretary of the Interior determines are of primary importance for the development, protection, administration, and utilization of public lands and resources under his/her control), may be used for independent bicycle routes and independent walkway projects. These funds may not be used for nonconstruction bicycle projects.

#### § 652.11 Planning.

Federally aided bicycle and pedestrian projects implemented within urbanized areas must be included in the transportation improvement program/annual (or biennial) element unless excluded by agreement between the State and the metropolitan planning organization.

#### § 652.13 Design and construction criteria.

(a) The American Association of State Highway and Transportation Officials' "Guide for Development of New Bicycle Facilities, 1981" (AASHTO Guide) or equivalent guides developed in cooperation with State or local officials and acceptable to the division office of the FHWA, shall be used as standards for the construction and design of bicycle routes. Copies of the AASHTO Guide may be obtained from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, NW., Suite 225, Washington, D.C. 20001.

(b) Curb cuts and other provisions as may be appropriate for the handicapped are required on all Federal and Federal-aid projects involving the provision of curbs or sidewalks at all pedestrian crosswalks.

## PART 655—TRAFFIC OPERATIONS

### Subpart A—Traffic Operations Improvement Programs (Topics)

Sec.

- 655.101 Purpose.
- 655.103 Policy and procedure.
- 655.105 Federal participation.
- 655.107 Eligibility.
- 655.109 Evaluation.

### Subpart B—[Reserved]

### Subpart C—National Standards for Specific Information Signs

- 655.301 Purpose.
- 655.302 Applicability.
- 655.303 Definitions.
- 655.304 Location.
- 655.305 Criteria for specific information permitted.
- 655.306 Composition.
- 655.307 Special requirements—Interstate highways and other freeways.
- 655.308 Special requirements—expressways.
- 655.309 Special requirements—conventional roads.
- 655.310 Procedures.

### APPENDIX A—SPECIFIC INFORMATION SIGNS

### Subpart D—Traffic Surveillance and Control

- 655.401 Purpose.
- 655.403 Traffic surveillance and control systems.
- 655.405 Policy.
- 655.407 Eligibility.
- 655.409 Traffic engineering analysis.
- 655.411 Project administration.

### Subpart E—[Reserved]

### Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways

- 655.601 Purpose.
- 655.602 Definitions.
- 655.603 Standards.
- 655.604 Achieving basic uniformity.
- 655.605 Project procedures.
- 655.606 Higher cost materials.
- 655.607 Funding.

### APPENDIX—ALTERNATE METHOD OF DETERMINING THE COLOR OF RETROREFLECTIVE SIGN MATERIALS

### Subpart G—Motorist-Aid Systems

- 655.701 Purpose.
- 655.702 Definitions.
- 655.703 Policy.
- 655.704 Procedures.
- 655.705 Design considerations.

Sec.

- 655.706 Eligibility.
- 655.707 Evaluation.

### Subpart A—Traffic Operations Improvement Programs (Topics)

**AUTHORITY:** 23 U.S.C. 101(e), 135, and 49 CFR 1.48(b).

**SOURCE:** 43 FR 58564, Dec. 15, 1978, unless otherwise noted.

#### § 655.101 Purpose.

The purpose of this regulation is to prescribe policies and procedures for the administration of traffic operations improvement programs.

#### § 655.103 Policy and procedure.

Each State shall have a continuing program designed to reduce traffic congestion and to directly facilitate traffic flow.

#### § 655.105 Federal participation.

Eligible traffic operation improvements may be financed from Federal funds available for:

- (a) The specific roadway on which the improvement is made, or
- (b) The system which directly benefits from the improvement.

#### § 655.107 Eligibility.

(a) Improvements on any public roadway which will ensure the efficient use of existing roadways on any of the Federal-aid systems through improved traffic flow, or reduced vehicle congestion or improved transit service or other projects (examples of these projects are listed in 23 CFR Part 450, Subpart A, Appendix A, "Advisory Information on Development of Transportation Systems Management Elements").

(b) *Parking improvements or modifications.* (1) Offstreet replacement parking facilities are eligible when part of an eligible improvement the removal of onstreet parking is required from areas already critically short of parking space.

(2) Angle (diagonal) parking is allowable on Federal-aid projects if in the judgment of the Division Administrator there will not be adverse effects on street capacity and safety.

## § 655.305 Evaluation.

The State's program should provide evaluation of new or unusual features. Federal funding of evaluation work may be approved under 23 U.S.C. 307(c), or 402, as appropriate. Instruction funds under 23 U.S.C. 307 may be used for project evaluations, but shall not be used for promotional evaluations.

## Subpart B—[Reserved]

## Subpart C—National Standards for Specific Information Signs

**THORITY:** 23 U.S.C. 109(d), 131(f), and 49 CFR 1.48(b), unless otherwise noted.  
**DATE:** 44 FR 6709, Feb. 2, 1979, unless otherwise noted.

## § 655.301 Purpose.

The purpose of this regulation is to establish standards for signs erected in highway rights-of-way to provide directional information for business establishments offering goods and services in the interest of the traveling public.

## § 655.302 Applicability.

The provisions of this regulation are applicable to the Federal-aid primary highway system, including Interstate highways. However, nothing in this regulation shall be construed to prevent any State from applying the standards to other classes of highways.

## § 655.303 Definitions.

Except as defined in this section, the terms used in this regulation shall be defined in accordance with the definitions and usage of the Manual on Uniform Traffic Control Devices (MUTCD).

"Business sign." A separately attached sign mounted on the rectangular sign panel to show the brand,

The Manual on Uniform Traffic Control Devices (MUTCD) is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C.

symbol, trademark, or name, or combination of these, for a motorist service available on a crossroad at or near an interchange or an intersection.

(b) "Specific information sign." A rectangular sign panel with:

- (1) The words, "GAS," "FOOD," "LODGING," or "CAMPING";
- (2) Directional information; and
- (3) One or more business signs.

(c) "State." Any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, or American Samoa.

## § 655.304 Location.

(a) *Intended for rural areas.* Specific information signs are intended for use primarily in rural areas. Any installation of such signs outside rural areas shall be consistent with the State signing policy criteria of paragraph (b) of § 655.310.

(b) *Lateral location.* The specific information signs should be located so as to take advantage of natural terrain, to have the least impact on the scenic environment, and to avoid visual conflict with other signs within the highway right-of-way. Unprotected sign panel supports located within the clear zone shall be of a breakaway design.

(c) *Relative location.* In the direction of traffic, successive specific information signs shall be those for "CAMPING," "LODGING," "FOOD," and "GAS" in that order.

## § 655.305 Criteria for specific information permitted.

(a) *Conformity with laws.* Each business identified on a specific information sign shall have given written assurance to the State of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color, sex, or national origin, and shall not be in breach of that assurance.

(b) *Distance to services.* The maximum distance that service facilities can be located from the main traveled way to qualify for a business sign shall be in accordance with State standards, but not to exceed 3 miles in either direction; except that, if within that 3-mile limit services of the type being

considered are not available, the limit of eligibility may be extended in 3-mile increments until services of the type being considered, or 15 miles, are reached.

(c) *Types of services permitted.* The types of services permitted shall be limited to "GAS," "FOOD," "LODGING," and "CAMPING." To qualify for display on a specific information sign:

- (1) *"GAS" shall include:*
  - (i) Vehicle services, which shall include fuel, oil, tire repair, and water;
  - (ii) Restroom facilities and drinking water;
  - (iii) Continuous operation at least 16 hours per day, 7 days a week for freeways and expressways, and continuous operation at least 12 hours per day, 7 days per week for conventional roads; and
  - (iv) Telephone.

(2) *"FOOD" shall include:*

- (i) Licensing or approval, where required;
- (ii) Continuous operation to serve three meals a day, 7 days a week; and
- (iii) Telephone.

(3) *"LODGING" shall include:*

- (i) Licensing or approval, where required;
- (ii) Adequate sleeping accommodations; and
- (iii) Telephone.

(4) *"CAMPING" shall include:*

- (i) Licensing or approval, where required;
- (ii) Adequate parking accommodations; and
- (iii) Modern sanitary facilities and drinking water.

(d) *Number of signs permitted.* The number of specific information signs permitted shall be limited to one for each type of service along an approach to an interchange or intersection. The number of business signs permitted on a sign panel is specified in §§ 655.307(b), 655.308(b), and 655.309(b). In exceptional cases, additional business signs may be considered.

#### § 655.306 Composition.

(a) *Sign panels.* The sign panels shall have a blue background with a white reflectorized border. The panels may be illuminated. The size of the

sign panels shall not exceed the maximum size necessary to accommodate the maximum number of business signs permitted using the required legend height and the interline edge spacing specified in the MUTCD.

(b) *Business signs.* Business signs shall have a blue background with white legend and border. The principal legend should be at least equal height to the directional legend or sign panel. Where business identification symbols or trademarks are alone for a business sign, the trademark may be omitted, the symbol or trademark shall be reproduced in the color and general shape consistent with customary use, and any integral legend shall be in proportionate size. Logos, slogans, symbols, and trademarks that resemble any official traffic control device are prohibited. The vertical horizontal spacing between business signs on sign panels shall not exceed 4 inches and 12 inches, respectively. Typical sign locations prepared these standards are shown in Appendix A.

(c) *Legends.* All directional signs and all letters and numbers used in the name of the type of service on the directional legend shall be white and reflectorized.

#### § 655.307 Special requirements—interchanges and other freeways.

(a) *Location.* (1) *Separate panel.* Except as provided in paragraph (b)(3) of this section, a separate sign panel shall be provided for each type of service for which business signs are displayed.

(2) *Relationship to exit gore.* Specific information signs shall be erected between the previous interchange and 800 feet in advance of the exit direction sign at the interchange from which the services are available. There should be at least 800 feet of clear space between the signs. Excessive spacing should be avoided.

(3) *Convenient reentry required.* Specific information signs shall not be erected at an interchange where a motorist cannot conveniently reenter the freeway and continue in the same direction of travel, or at interchanges between freeways.

(4) *Exit ramp signs.* At single-exit interchanges where service facilities are not visible from a ramp terminal, exit ramp signs shall be installed along the ramp or at the ramp terminal, and they shall be provided along the crossroad. Exit ramp signs shall be duplicates of the corresponding specific information signs along the main roadway but reduced in size. Service information for facilities may be omitted. The signs shall include the distances to the service installations and directional arrows in lieu of words. The minimum letter height should be 4 inches except that any legend on a symbol shall be proportional to the size of the symbol. Exit ramp signing may be used on ramps at crossroads at double-exit interchanges.

(b) *Composition*—(1) *Single-exit interchanges.* The name of the type of service followed by the exit number shall be displayed in one line above business signs. At unnumbered interchanges, the directional legend NEXT RIGHT (LEFT) shall be substituted for the exit number. The "GAS" specific information sign shall be limited to six business signs; the "FOOD," "LODGING," and "CAMPING" specific information signs shall be limited to four business signs each.

(2) *Double-exit interchanges.* The specific information signs shall consist of two sections, one for each exit. The first section shall display the business signs for the first exit and the lower section shall display the business signs for the second exit. The name of the type of service followed by the exit number shall be displayed in a line above the business signs in each section. At unnumbered interchanges, the directional legend NEXT RIGHT (LEFT) and NEXT RIGHT (LEFT) shall be substituted for the exit numbers. Where a type of motorist service is to be provided for at only one exit, one section of the specific information sign may be omitted, or a single-exit interchange sign may be used. The number of business signs on the sign panel shall be limited to four for "GAS" and four each for "FOOD," "LODGING," and "CAMPING."

(3) *Remote rural interchanges.* In remote rural areas, where not more

than two qualified facilities are available for each of two or more types of services, business signs for two types of services may be displayed on the same sign panel. Not more than two business signs for each type of service shall be displayed in combination on a panel. The name of each type of service shall be displayed above its respective business sign(s), and the exit number shall be displayed above the names of the types of services. At unnumbered interchanges, the legend NEXT RIGHT (LEFT) shall be substituted for the exit number. Business signs should not be combined on a panel when it is anticipated that additional service facilities will become available in the near future. When it becomes necessary to display a third business sign for a type of service displayed in combination, the business signs involved shall then be displayed in compliance with paragraphs (b) (1) and (2) of this section.

(c) *Size*—(1) *Business signs.* (i) Each business sign displayed on the "GAS" specific information sign shall be contained within a 48-inch-wide and 36-inch-high rectangular background area, including the border.

(ii) Each business sign on the "FOOD," "LODGING," and "CAMPING" specific information signs shall be contained within a 60-inch-wide and 36-inch-high rectangular background area, including border.

(2) *Legends.* All letters used in the name of the type of service and the directional legend shall be 10-inch capital letters. Numbers shall be 10 inches in height.

#### § 655.308 Special requirements—expressways.

(a) *Location*—(1) *Interchanges.* The location of specific information signs and exit ramp signs erected for interchanges shall be in accordance with the provisions of paragraph (a) of § 655.307.

(2) *Intersections.* The specific information signs should be erected between the previous interchange or intersection and 300 feet in advance of the intersection from which the services are available. The spacing between sign panels, and between sign

panels and other traffic control devices, should be determined on the basis of an engineering study. Business signs should not be displayed for a type of service for which a qualified facility is visible from a point on the traveled way 300 feet from the intersection. Signs similar to exit ramp signs of paragraph (a)(4) of § 655.307 may be provided on the crossroad.

(b) *Composition*—(1) *Interchanges*. The composition of specific information signs and exit ramp signs erected for interchanges shall be in accordance with paragraph (b) of § 655.307.

(2) *Intersections*. A maximum of four business signs for each type of service shall be displayed along each approach to the intersection. No more than four business signs shall be displayed on each sign panel. A maximum of two business signs for each of two different types of services may be combined on the same sign panel. The name of each type of service shall be displayed above its business sign(s) together with an appropriate legend such as NEXT RIGHT (LEFT) or a directional arrow.

(c) *Size*—(1) *Interchanges*—(i) *Business signs*. Business signs shall conform to the sizes specified in paragraph (c)(1) of § 655.307.

(ii) *Legends*. Legends shall conform to the requirements of paragraph (c)(2) of § 655.307.

(2) *Intersections*—(i) *Business signs*. Each business sign shall be contained within a 36-inch wide and 24-inch high rectangular background, area, including border; except that, where permitted in the State signing policy of paragraph (b) of § 655.310 the business signs may conform to the requirements of paragraph (c)(1) of § 655.307.

(ii) *Legends*. All letters used in the name of the type of service and the directional legend shall be 6-inch capital letters; except that, where permitted in the State signing policy of paragraph (b) of § 655.310, the legends may conform to the requirements of paragraph (c)(2) of § 655.307.

(iii) *Coordination of sizes*. Business signs and legends in accordance with paragraphs (c)(1) and (2) of § 655.307, respectively, shall be used only in combination with each other. They shall not be used on conventional roads.

# § 655.309 Special requirements—conventional roads.

(a) *Location*. The location of specific information signs shall be specified in paragraph (a)(2) of § 655.308.

(b) *Composition*. The composition of the specific information signs shall be as specified in paragraph (b)(2) of § 655.308.

(c) *Size*—(1) *Business signs*. Each business sign shall be contained within a 24-inch wide and 18-inch high rectangular background area, including border.

(2) *Legends*. All letters used in name of the type of service and the directional legend shall be 4-inch capital letters.

## § 655.310 Procedures.

(a) *State's prerogative*. Specific information signs may be erected at the option of the State. All specific information signs erected on any highway open to public travel shall conform to the provisions of this regulation.

(b) *State signing policy*. The State should develop a policy for specific information signing prior to sign installation. This policy, as a minimum shall include criteria for:

- (1) Distances to eligible services;
- (2) Selection of eligible businesses;
- (3) Use of business signs and legends conforming to the provisions of paragraphs (c) (1) and (2) of § 655.307 respectively, at intersections on express ways;

(4) Removing or covering business signs during off seasons for business operated on a seasonal basis;

(5) Prescribing the circumstances, any, in which specific information signs may be used outside rural areas and

(6) Determining the costs to businesses for initial permits installation, annual maintenance, removal, etc. business signs.

(c) *Eligibility of funds*. Federal highway funds are eligible to participate in the cost and erection of specific information signs on Federal highways in the same manner that such funds are eligible for other highway traffic control devices on the Federal-aid highway systems. Specific

information signing installed as a subsequent phase to a completed Interstate project is not eligible for Federal-aid Interstate construction funds. Federal-aid highway funds are not eligible to participate in the cost of procuring and installing business signs on signposts or on ramp signs.

b) *Approvals.* The procedures for obtaining approval for programming,

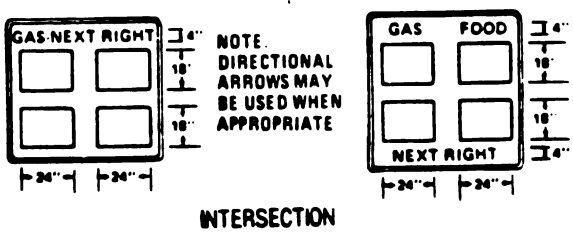
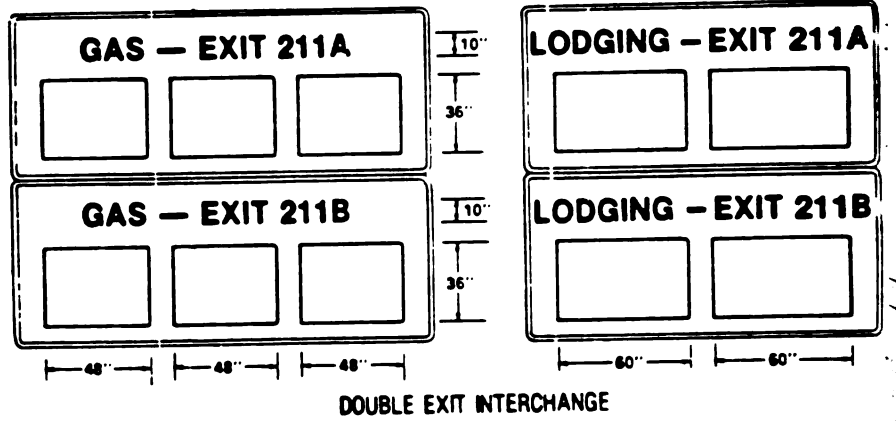
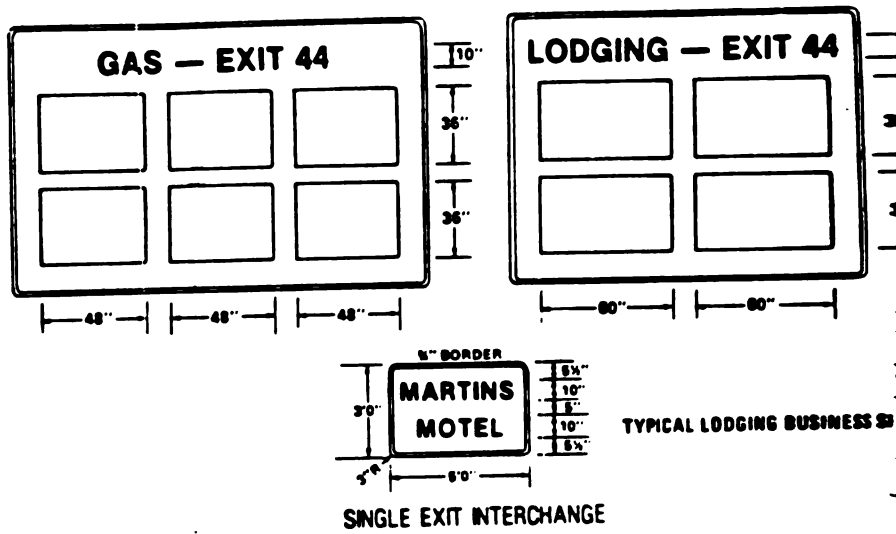
project authorizations, and other actions for Federal-aid projects which include these signs shall follow the same procedures as other Federal-aid projects in the State.

(23 U.S.C. 109, 131, 149, 315, and 319; 49 CFR 1.48(b); Pub. L. 97-134; 95 Stat. 1699)

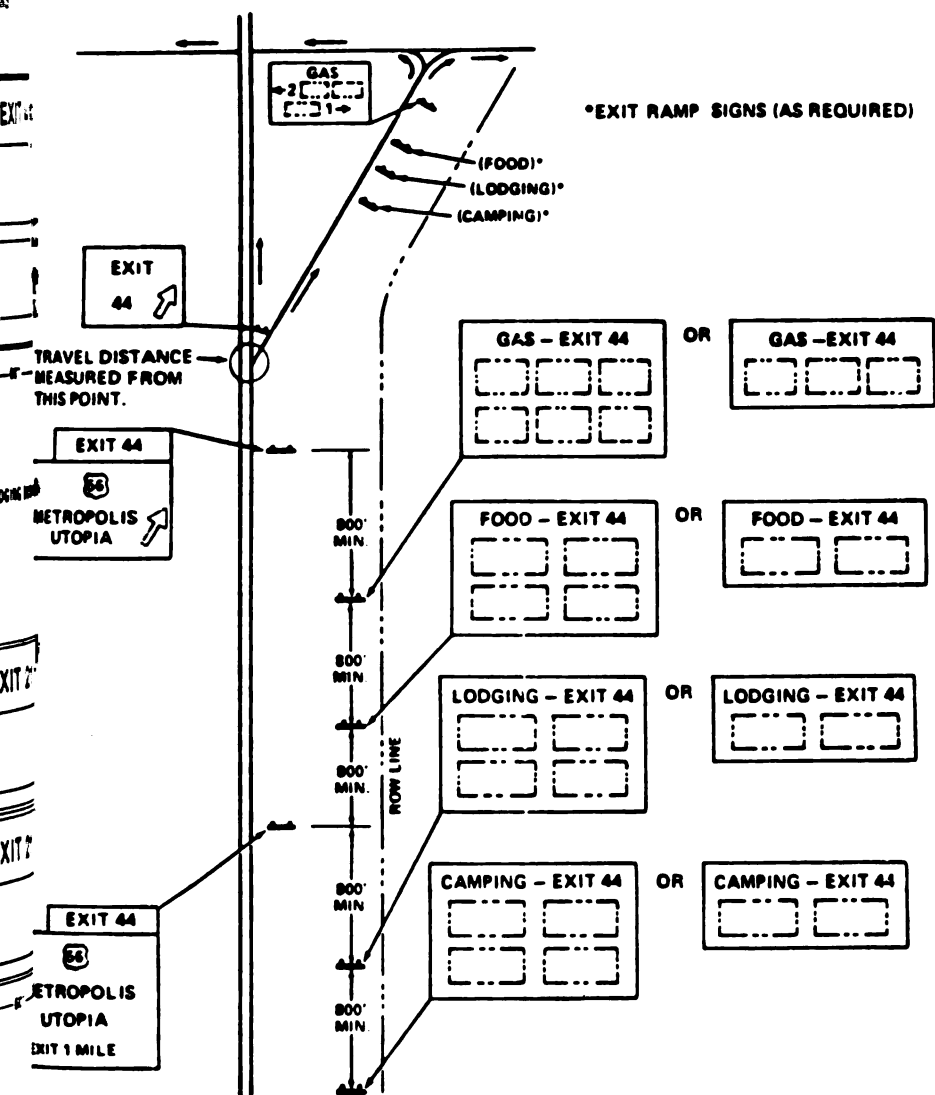
[44 FR 6709, Feb. 2, 1979, as amended at 49 FR 1896, Jan. 16, 1984]



APPENDIX A -- SPECIFIC INFORMATION SIGNS



TYPICAL SPECIFIC INFORMATION SIGNS



## TYPICAL SIGNING FOR SINGLE EXIT INTERCHANGES

### Subpart D—Traffic Surveillance and Control

**AUTHORITY:** 23 U.S.C. 101(a), 135(b) and 315; 49 CFR 1.48(b).

**SOURCE:** 49 FR 8436, Mar. 7, 1984, unless otherwise noted.

#### § 655.401 Purpose.

The purpose of this regulation is to provide policies and procedures relating to Federal-aid requirements of traffic surveillance and control system projects.

#### § 655.403 Traffic surveillance and control systems.

(a) A traffic surveillance and control system is an array of human, institutional, hardware and software components designed to monitor and control traffic, and to manage transportation on streets and highways and thereby improve transportation performance, safety, and fuel efficiency.

(b) Systems may have various degrees of sophistication. Examples include, but are not limited to, the following systems: traffic signal control, freeway surveillance and control, and highway advisory radio, reversible lane control, tunnel and bridge control, adverse weather advisory, remote control of movable bridges, and priority lane control.

(c) Systems start-up is the process necessary to assure the surveillance and control project operates effectively. The start-up process is accomplished in a limited time period immediately after the system is functioning and consists of activities to achieve optimal performance. These activities include evaluation of the hardware, software and system performance on traffic; completion and updating of basic data needed to operate the system; and any modifications or corrections needed to improve system performance.

#### § 655.405 Policy.

Implementation and efficient utilization of traffic surveillance and control systems are essential to optimize transportation systems efficiency, fuel conservation, safety, and environmental quality.

#### § 655.407 Eligibility.

Traffic surveillance and control system projects are an integral part of Federal-aid highway construction and all phases of these projects are eligible for funding with appropriate Federal-aid highway funds. The degree of sophistication of any system must be scale with needs and with the availability of personnel and budget resources to operate and maintain the system.

#### § 655.409 Traffic engineering analysis.

Traffic surveillance and control system projects shall be based on traffic engineering analysis. The analysis should be on a scale commensurate with the project scope. The basic elements of the analysis are:

(a) *Preliminary analysis.* The Preliminary Traffic Engineering Analysis should determine: The area to be controlled; transportation characteristics; objectives of the system; existing systems resources (including communications); existing personnel and budget resources for the maintenance and operation of the system.

(b) *Alternative systems analysis.* Alternative systems should be analyzed, as applicable. For the alternatives considered, the analysis should encompass incremental initial costs; required maintenance and operating budget and personnel resources; and expected benefits. Improved use of existing resources, as applicable, should be considered also.

(c) *Procurement and system start-up analysis.* Procurement and system start-up methods should be considered in the analysis. Federal-aid laws, regulations, policies, and procedures provide considerable flexibility to accommodate the special needs of system procurement.

(d) *Special features analysis.* Unique or special features including special components and functions (such as emergency vehicle priority control, redundant hardware, closed circuit television, etc.) should be specifically evaluated in relation to the objectives of the system and incremental initial costs, operating costs, and resource requirements.

(e) *Analysis of laws and ordinances.* Existing traffic laws, ordinances, and regulations relevant to the effective operation of the proposed system shall be reviewed to ensure compatibility.

(f) *Operations plan.* The final element in the traffic engineering analysis shall be an operations plan. It shall include needed legislation, systems design, procurement methods, construction management procedures including acceptance testing, system start-up plan, operation and maintenance plan. It shall include necessary institutional arrangements and the allocation of needed personnel and budget resources required for the proposed system.

Approved by the Office of Management and Budget under control number 2125-

#### § 655.601 Project administration.

(a) Prior to authorization of Federal highway funds for construction, there should be a commitment to the operations plan (see § 655.409 (f)).

(b) The plans, specifications and estimates submittal shall include a total system acceptance plan.

(c) Project approval actions are delegated to the Division Administrator. Approval actions for traffic surveillance and control system projects costing over \$1,000,000 are subject to review by the Regional Administrator prior to approval of plans, specifications, and estimates.

(d) System start-up is an integral part of a surveillance and control system. (1) Costs for system start-up, above and above those attributable to routine maintenance and operation, are eligible for Federal-aid funding.

(2) Final project acceptance should occur until after completion of the start-up phase.

#### Subpart E—[Reserved]

#### Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways

**AUTHORITY:** 23 U.S.C. 109(d), 114(a), 217, 5, 402(a), 23 CFR 1204.4; and 49 CFR 18(b).

**SOURCE:** 48 FR 46776, Oct. 14, 1983, unless otherwise noted.

#### § 655.601 Purpose.

To prescribe the policies and procedures of Federal Highway Administration (FHWA) to obtain basic uniformity of traffic control devices on all streets and highways in accordance with the Manual on Uniform Traffic Control Devices (MUTCD).<sup>1</sup>

#### § 655.602 Definitions.

The terms used herein are defined in accordance with definitions and usages contained in the MUTCD and 23 U.S.C. 101(a).

#### § 655.603 Standards.

(a) *National MUTCD.* The MUTCD approved by the Federal Highway Administrator is the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel in accordance with 23 U.S.C 109(d) and 402(a). The national MUTCD is specifically approved by the FHWA for application on any highway project in which Federal highway funds participate and on projects in federally administered areas where a Federal department or agency controls the highway or supervises the traffic operations.

(b) *State or other Federal MUTCD.* (1) Where State or other Federal agency MUTCDs or supplements are required, they shall be in substantial conformance with the national MUTCD. Changes to the national MUTCD issued by the FHWA shall be adopted by the States or other Federal agencies within 2 years of issuance. The FHWA Regional Administrator has been delegated the authority to approve State MUTCDs and supplements.

(2) The Direct Federal Program Administrator has been delegated the authority to approve other Federal

<sup>1</sup>The MUTCD, which is incorporated by reference at 23 CFR 625.3, may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (GPO Stock No. 050-001-81001-8). It is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

agency MUTCDs with the concurrence of the Office of Traffic Operations. States and other Federal agencies are encouraged to adopt the national MUTCD as their official Manual on Uniform Traffic Control Devices.

(c) *Color specifications.* Color determinations and specifications of sign and pavement marking materials shall conform to requirements of the FHWA Color Tolerance Charts.<sup>2</sup> An alternate method of determining the color of retroreflective sign material is provided in the Appendix.

(d) *Compliance—(1) Existing highways.* Each State, in cooperation with its political subdivisions, and Federal agencies shall have a program as required by Highway Safety Program Standard Number 13, Traffic Engineering Services (23 CFR 1204.4) which shall include provisions for the systematic upgrading of substandard traffic control devices and for the installation of needed devices to achieve conformity with the MUTCD.

(2) *New or reconstructed highways.* Federal-aid projects for the construction, reconstruction, resurfacing, restoration, or rehabilitation of streets and highways shall not be opened to the public for unrestricted use until all appropriate traffic control devices, either temporary or permanent, are installed and functioning properly. Both temporary and permanent devices shall conform to the MUTCD.

(3) *Construction area activities.* All traffic control devices installed in construction areas using Federal-aid funds shall conform to the MUTCD. Traffic control plans for handling traffic and pedestrians in construction zones and for protection of workers shall conform to the requirements of 23 CFR Part 630, Subpart J, Traffic Safety in Highway and Street Work Zones.

(4) *MUTCD changes.* The FHWA may establish target dates for achieving compliance with changes to specific devices in the MUTCD.

(e) *Specific information signs.* Standards for specific information

signs are contained in 23 CFR Part 655, Subpart C, National Standards for Specific Information Signs.

#### § 655.604 Achieving basic uniformity.

(a) *Programs.* Programs for the orderly and systematic upgrading of existing traffic control devices or the installation of needed traffic control devices on or off the Federal-aid system should be based on inventories made in accordance with 23 CFR 120 Highway Safety Program Standards. These inventories provide the information necessary for programmatic traffic control device upgrade projects.

(b) *Inventory.* An inventory of traffic control devices is required Highway Safety Program Standard Number 13, Traffic Engineering Services (23 CFR 1204.4). Highway planning and research funds and highway related safety grant program funds may be used in statewide or systemwide studies or inventories. Also, metropolitan planning (PL) funds may be used in urbanized areas provided activity is included in an approved funded work program.

#### § 655.605 Project procedures.

(a) *Federal-aid highways.* Federal aid projects involving the installation of traffic control devices shall follow procedures as established in 23 CFR Part 630, Subpart A, Federal-Aid Programs Approval and Project Authorization. Simplified and timesaving procedures are to be used to the extent permitted by existing policy.

(b) *Off-system highways.* Certain federally funded programs are available for installation of traffic control devices on streets and highways that are not on the Federal-aid system. Procedures used in these programs may vary from project to project. Essentially, the guidelines set forth herein should be used.

#### § 655.606 Higher cost materials.

The use of signing, pavement marking, and signal materials (or equipment) having distinctive performance characteristics, but costing more than other materials (or equipment) commonly used may be approved by the

<sup>2</sup> Available for inspection from the Office of Traffic Operations, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

FHWA Division Administrator when the specific use proposed is considered to be in the public interest.

#### 655.607 Funding.

(a) *Federal-aid highways.* (1) Funds apportioned or allocated under 23 U.S.C. 104(b) are eligible to participate in projects to install traffic control devices in accordance with the MUTCD for newly constructed, reconstructed, surfaced, restored, or rehabilitated highways, or on existing highways when this work is classified as construction in accordance with 23 U.S.C. 104(a). Federal-aid highway funds for eligible pavement markings and traffic control signalization may amount to 3 percent of the construction cost. Federal-aid highway funds apportioned or allocated under other sections of 23 U.S.C. are eligible for participation in improvements conforming to the MUTCD in accordance with provisions of applicable program regulations and directives.

(b) Traffic control devices are eligible in keeping with paragraph (a)(1) of this section, provided that the work is classified as construction in accordance with 23 U.S.C. 104(a) and the State or local agency has a policy acceptable to the FHWA Division Administrator for selecting traffic control devices material or equipment based on items such as cost, traffic volume, safety, and expected service life. The State's policy should provide for effective selection of materials which will provide for substantial service life taking into account expected necessary routine maintenance. For these purposes, effectiveness should normally be measured in terms of durability, service life and/or performance of the material. Specific projects including material or equipment selection shall be developed in accordance with this policy. Proposed work may be approved on a project-by-project basis when the work is (i) clearly warranted, (ii) on a Federal-aid project, (iii) clearly identified by site, substantial in nature, and (v) of sufficient magnitude at any given location to warrant Federal-aid participation as a construction item.

(c) The method of accomplishing the work will be in accordance with 23

CFR Part 635 Subpart A, Contract Procedures.

(b) *Off-system highways.* Certain Federal-aid highway funds are eligible to participate in traffic control device improvement projects on off-system highways. In addition, Federal-aid highway funds apportioned or allocated in 23 U.S.C. are eligible for the installation of traffic control devices on any public road not on the Federal-aid system when the installation is directly related to a traffic improvement project on a Federal-aid system route.

#### APPENDIX—ALTERNATE METHOD OF DETERMINING THE COLOR OF RETROREFLECTIVE SIGN MATERIALS

1. The FHWA Color Tolerance Charts provide that conventional color measuring instruments such as spectrophotometers and tristimulus photoelectric colorimeters should not be used for measurement of retroreflective material colors and that such materials should be evaluated visually using the Color Tolerance Charts and paying strict attention to prescribed illumination and viewing conditions.

2. As an alternate to visual testing, the diffuse day color of retroreflective sign material may be determined in accordance with ASTM E 97, "Standard Method of Test for 45-Degree, 0-Degree Directional Reflectance of Opaque Specimens by Filter Photometry." Geometric characteristics must be confined to illumination incident within 10 degrees of, and centered about, a direction of 45 degrees from the perpendicular to the test surface; viewing is within 15 degrees of, and centered about, the perpendicular to the test surface. Conditions of illumination and observation must not be interchanged.

3. Standards to be used for reference are the Munsell Papers designated in Table I or Table II, attached. The papers must be recently calibrated on a spectrophotometer. Acceptable test instruments are:

- a. Gardner Multipurpose Reflectometer or Model XL 20 Color Difference Meter,
- b. Gardner Model Ac-2a or XL 30 Color Difference Meter,
- c. Meeco Model V Colormaster,
- d. Hunter lab D25 Color Difference Meter,
- or
- e. Approved equal.

4. Average performance sheeting is identified as Types I and II sheeting and high performance sheeting is identified as Types III and IV sheeting in Standard Specifications for Construction of Roads and Bridges

on Federal Highway Projects<sup>3</sup> (FP-79, Section 633).

TABLE I—COLOR SPECIFICATION LIMITS AND REFERENCE STANDARDS, TYPES I AND II SHEETING

| Color                    | Chromaticity coordinates <sup>1</sup> (corner points) |      |      |      |      |      |      |      | Reflectance limits (percent Y) |              | Reference <sup>2</sup> standard (munsell papers) |
|--------------------------|-------------------------------------------------------|------|------|------|------|------|------|------|--------------------------------|--------------|--------------------------------------------------|
|                          | 1                                                     |      | 2    |      | 3    |      | 4    |      | Y                              |              |                                                  |
|                          | x                                                     | y    | x    | y    | x    | y    | x    | y    |                                |              |                                                  |
|                          |                                                       |      |      |      |      |      |      |      | Min-<br>ium                    | Max-<br>imum |                                                  |
| White <sup>2</sup> ..... | .305                                                  | .290 | .350 | .342 | .321 | .361 | .276 | .308 | 35                             | —            | 6.3Gy 6.77/0.8.                                  |
| Red .....                | .602                                                  | .317 | .664 | .336 | .644 | .356 | .575 | .356 | 8                              | 12           | 8.2R 3.78/14.0.                                  |
| Orange .....             | .535                                                  | .375 | .607 | .393 | .582 | .417 | .535 | .399 | 18                             | 30           | 2.5YR 5.5/14.0                                   |
| Brown .....              | .445                                                  | .353 | .604 | .396 | .556 | .443 | .445 | .386 | 4                              | 9            | 5.0YR 3/6.                                       |
| Yellow .....             | .482                                                  | .450 | .532 | .465 | .505 | .494 | .475 | .485 | 29                             | 45           | 1.25Y 6/12.                                      |
| Green .....              | .130                                                  | .369 | .180 | .391 | .155 | .460 | .107 | .439 | 3.5                            | 9            | 0.65BG 2.84/8.45.                                |
| Blue .....               | .147                                                  | .075 | .176 | .091 | .176 | .151 | .106 | .113 | 1.0                            | 4            | 5.8PB 1.32/6.8.                                  |

<sup>1</sup> The four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE 1931 standard color system measured with standard illumination source C.

<sup>2</sup> Silver white is an acceptable color designation.

<sup>3</sup> Available from Munsell Color Company, 2441 Calvert Street, Baltimore, Maryland 21218.

TABLE II—Color Specification Limits and Reference Standards, Types III and IV Sheeting

| Color                    | Chromaticity Coordinates <sup>1</sup> (corner points) |      |      |      |      |      |      |      | Reflec-<br>tance limits<br>(percent Y) |       | Reference <sup>2</sup> standard (muns-<br>papers) |
|--------------------------|-------------------------------------------------------|------|------|------|------|------|------|------|----------------------------------------|-------|---------------------------------------------------|
|                          | 1                                                     |      | 2    |      | 3    |      | 4    |      | Y                                      |       |                                                   |
|                          | x                                                     | y    | x    | y    | x    | y    | x    | y    |                                        |       |                                                   |
|                          |                                                       |      |      |      |      |      |      |      |                                        | Min.  |                                                   |
| White <sup>2</sup> ..... | .303                                                  | .287 | .368 | .353 | .340 | .380 | .274 | .316 | 27                                     | ..... | 5.0PB 7/1.                                        |
| Red .....                | .613                                                  | .297 | .708 | .292 | .636 | .364 | .558 | .352 | 2.5                                    | 11    | 7.5R 3/12.                                        |
| Orange .....             | .550                                                  | .360 | .630 | .370 | .581 | .418 | .516 | .394 | 14                                     | 30    | 2.5YR 5.5/14.                                     |
| Yellow .....             | .498                                                  | .412 | .557 | .442 | .479 | .520 | .438 | .472 | 15                                     | 40    | 1.25Y 6/12.                                       |
| Green .....              | .030                                                  | .380 | .166 | .346 | .286 | .428 | .201 | .776 | 3                                      | 8     | 10G 3/8                                           |
| Blue .....               | .144                                                  | .030 | .244 | .202 | .190 | .247 | .066 | .208 | 1                                      | 10    | 5.8PB 1.32/6.8.                                   |

<sup>1</sup> The four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE 1931 standard color system measured with standard illumination source C.

<sup>2</sup> Silver white is an acceptable color designation.

<sup>3</sup> Available from Munsell Color Company, 2441 Calvert Street, Baltimore, Maryland 21218.

### Subpart G—Motorist-Aid Systems

**AUTHORITY:** 23 U.S.C. 104, 105, 307, 315; 23 CFR 1.32; 49 CFR 1.48.

**SOURCE:** 40 FR 20078, May 8, 1975, unless otherwise noted.

#### § 655.701 Purpose.

The purpose of this subpart is to provide policies and procedures relating to motorist-aid systems on Federal-aid highways and for Federal participation in the cost of these systems.

#### § 655.702 Definitions.

(a) "Motorist-aid system" means an installation of devices along the right-

of-way which identifies the location a stranded motorist, provides communication of his needs to central locations, and provides the appropriate response to his needs.

(b) "Coded-message system" is a system in which the communication needs is accomplished entirely coded signals without voice intervention.

(c) "Voice system" is a system which the communication of needs accomplished by conversation between the stranded motorist and a system operator.

(d) "Roadside call terminal" is a device installed along the highway right-of-way which provides the means

<sup>3</sup>This document is available for inspection and copying as prescribed in 49 CFR Part 7,

Appendix D.

communication between the motorist and the system operator.

(e) "Automatic location identification" denotes the display of a suitable, identifying code to the system operator which positively identifies the location of the motorist. The identifying code is transmitted automatically when the motorist uses the roadside terminal.

#### § 655.703 Policy.

The need for provision of motorist-aid systems on some Federal-aid highways is recognized, and the Federal Highway Administration will participate with interested States in the development of such systems.

#### § 655.704 Procedures.

(a) Federal-aid highway construction projects may participate in installations of motorist-aid systems either on an experimental-project basis in accordance with the provisions of the Federal-Aid Highway Program Manual, Volume 6, chapter 4, section 2, subsection 4' or on a normal Federal-aid basis. The following types of motorist-aid systems may be installed with regular Federal-aid construction funds participating.

(1) Coded-message systems (push-button or combined mechanical/push-button operation) having as a minimum, a "call confirmed" feature actuated at the receiving location, a call pending feature at the roadside terminal (sending) location, automatic location identification, and served by releases which correspond to the coded messages sent from the sending location.

(2) Voice systems (wire and radio) having as a minimum, two-way communication, called party control, and automatic location identification.

Other systems are continued in an experimental status.

(b) All projects implemented under this subsection are subject to all normal Federal-aid procedures unless other procedures as approved by the Administrator are applicable.

The Federal-Aid Highway Program Manual may be examined at the location listed in 49 CFR Part 7, Appendix D.

(c) The State may select either voice operation or coded message operation for a project. The project specifications shall permit competition among all alternative types of equipment available for the operation selected; i.e., for voice operation, wire, radio, etc., equipment and for pushbutton operation, battery, batteryless, etc. Plans and specifications shall meet the requirements of Parts 633 and 635 of this chapter.

(d) The Plans, Specifications, and Estimate (PS&E) shall contain provisions to insure that all necessary operational materials, devices, and equipment have been adequately tested under environmental conditions with extremes equal to or greater than that expected under operational conditions, prior to their installation. Equipment used in the installation shall be operational; i.e., development of equipment is not to be a part of the project.

(e) To be eligible for Federal-aid funds every proposed system shall have a complete operational response plan. This operational plan shall include agreements in writing between all the operating organizations, specifically delineating the responsibilities of each of the parties to the agreement. Among items which are to be covered in the agreements are: Procedure for answering calls, costs of provided services, and maintenance. This operational plan shall be complete at the time of submittal and shall accompany the PS&E.

(f) The collection, reporting, and analysis of data for experimental motorist-aid system projects installed under normal construction procedures are eligible for Highway Planning and Research (HP&R) funding when approved as an activity under the HP&R work program (Part 420, Subpart A, of this chapter).

(g) Active projects which incorporate the modes of operation released from experimental status under this policy issuance but which were approved under the provisions of prior directives shall be completed, including the required research, in accordance with the original directive.



**§ 655.705 Design considerations.**

(a) *Physical design considerations for roadside call terminals.* (1) Roadside call terminals including their supports shall meet all requirements for roadside appurtenances contained in the design standards referenced in the Federal-Aid Highway Program Manual, volume 6, chapter 2, section 3.

(2) The roadside call terminal shall not be located on the upstream side of its support where the user would have his back to traffic.

(b) *Location design considerations for roadside call terminals.* (1) Roadside call terminals shall be placed on both sides of a highway at each longitudinal location to discourage attempts by stranded motorists to cross the highway. Additional roadside call terminals may be installed in the median if the roadway has three or more lanes.

(2) The roadside call terminals shall be clearly identified, be visible, and not hidden by columns, signs, etc.

(3) Where conditions warrant, roadside call terminals should be placed at rest areas.

(4) Plans should not be approved prior to an appropriate field review of each proposed roadside call terminal site.

**§ 655.706 Eligibility.**

Evaluation of normal construction projects, in accordance with requirements outlined in § 655.707 is eligible for normal construction funding.

**§ 655.707 Evaluation.**

(a) The State shall evaluate all motorist-aid system projects installed under normal construction procedures within one year of project acceptance. The evaluation should be designed to determine:

(1) Mechanical effectiveness.

(2) Operational response plan effectiveness.

(3) Maintenance and operation costs.

(4) System usage.

(b) Requirements for experimental projects:

(1) Experimental motorist-aid system projects shall be limited to a section of one highway covering a distance governed by the capacity and capability of one central control or dis-

patching agency to respond to the motorists' calls for assistance. This distance may vary but is not expected to exceed 40 miles.

(2) The experimental project evaluation shall include the following:

(i) Stopped vehicle survey.

(ii) Elapsed time required to serve the stranded motorist.

(iii) Data on attempts by motorists to get help by means in addition to roadside call terminals.

(iv) Cost of maintaining and operating the system.

**PART 656—CARPOOL AND VANPOOL PROJECTS**

**Sec.**

656.1 Purpose.

656.3 Policy.

656.5 Eligibility.

656.7 Determination of an exception.

**AUTHORITY:** 23 U.S.C. 146 and 315; section of the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2600, CFR 1.48(b).

**SOURCE:** 47 FR 43024, Sept. 30, 1982, unless otherwise noted.

**§ 656.1 Purpose.**

The purpose of this regulation is to prescribe policies and general procedures for administering a program of ridesharing projects using Federal primary, secondary, and urban system funds.

**§ 656.3 Policy.**

Section 126(d) of the Surface Transportation Assistance Act of 1978 requires that special effort should be made to promote commuter mode transportation which conserve energy, reduce pollution, and reduce traffic congestion.

**§ 656.5 Eligibility.**

(a) Projects which promote ridesharing programs need not be located in but must serve a Federal-aid system be eligible for Federal-aid primary, secondary, or urban system funds depending on the system served. The Federal share payable will be in accordance with the provisions of U.S.C. 120. Except for paragraph (c) of this section, for all purposes of this

regulation the term "carpool" includes vanpool."

(b) Projects shall not be approved under this regulation if they will have an adverse effect on any mass transportation system.

(c) The following types of projects and work are considered eligible under this program:

(1) Systems, whether manual or computerized, for locating potential participants in carpools and informing them of the opportunities for participation. Eligible costs for such systems may include costs of use or rental of computer hardware, costs of software, and installation costs (including both or and other related items).

(2) Specialized procedures to provide pooling opportunities to elderly or handicapped persons.

(3) The costs of acquiring vanpool vehicles and actual financial losses that occur when the operation of any pool is aborted before the scheduled termination date for the reason, determined by the State, that its operation is no longer productive. The costs of acquiring a vanpool vehicle is eligible under the following conditions:

The vanpool vehicle is a four-wheeled vehicle manufactured for use on public highways for transportation of 15 passengers (no passenger cars that do not meet the 7-15 criteria for buses); and

Provision is made for repayment of acquisition cost to the project in the passenger-service life of the vehicle. Repayment may be accomplished through the charging of a reasonable user fee based on an estimated number of riders per vehicle and the cost of reasonable vehicle depreciation, operation, and maintenance. Repayment is not required under the following conditions:

(1) When vehicles are purchased as instructor vans for use as a training device. Vehicles procured for this purpose should be used to promote the vanpool concept among employees, employers, and other groups following potential riders and sponsors to examine commuter vans; or

(2) When vehicles are purchased for use on a trial commuting basis to enable people to experience vanpool-

ing first hand. The trial period must be limited to a maximum of 2 months. That part of the user fee normally collected to cover the capital or ownership cost of the van would be eligible for reimbursement as a promotional cost during the limited trial period. As with established vanpool service, all vehicle operating costs must be borne by the user(s) during the trial period.

(4) Work necessary to designate existing highway lanes as preferential carpool lanes or bus and carpool lanes. Eligible work may include preliminary engineering to determine traffic flow and design criteria, signing, pavement markings, traffic control devices, and minor physical modifications to permit the use of designated lanes as preferential carpool lanes or bus and carpool lanes. Such improvements on any public road may be approved if such projects facilitate more efficient use of any Federal-aid highway. Eligible costs may also include costs of initial inspection or monitoring of use, including special equipment, to ensure that the high occupancy vehicle (HOV) lanes designation is effective and that the project is fully developed and operating properly. While no fixed time limit is being arbitrarily prescribed for the inspection and monitoring period, it is intended that this activity be conducted as soon as possible to evaluate the effectiveness of the project and does not extend indefinitely nor become a part of routine facility operations.

(5) Signing of and modifications to existing facilities to provide preferential parking for carpools inside or outside the central business district. Eligible costs may include trail blazers, on-site signs designating highway interchange areas or other existing publicly or privately owned facilities as preferential parking for carpool participants, and initial or renewal costs for leasing parking space or acquisition or easements or restrictions, as, for example, at shopping centers and public or private parking facilities. The lease or acquisition cost may be computed on the demonstrated reduction in the overall number of vehicles using the designated portion of a commercial facility, but not on a reduction of the per-vehicle user charge for parking.

(6) Construction of carpool parking facilities outside the central business district. Eligible costs may include acquisition of land and normal construction activities, including installation of lighting and fencing, trail blazers, on-site signing, and passenger shelters. Such facilities need not be located in conjunction with any existing or planned mass transportation service, but should be designed so that the facility could accommodate mass transportation in the event such service may be developed. Except for the requirement of the availability of mass/public transportation facilities, fringe parking construction under this section shall be subject to the provisions of 23 CFR 810.106.

(7) Reasonable public information and promotion expenses, including personnel costs, incurred in connection with any of the other eligible items mentioned herein.

#### § 656.7 Determination of an exception.

(a) The FHWA has determined under provisions of 23 U.S.C. 146(b) that an exceptional situation exists in regard to the funding of carpools so as to allow the State to contribute as its share of the non-Federal match essential project-related work and services performed by local agencies and private organizations when approved and authorized in accordance with regular Federal-aid procedures. The cost of such work must be properly valued, supportable and verifiable in order for inclusion as an eligible project cost. Examples of such contributed work and services include: public service announcements, computer services, and project-related staff time for administration by employees of public and private organizations.

(b) This determination is based on: (1) The nature of carpool projects to provide a variety of services to the public; (2) the fact that carpool projects are labor intensive and require professional and specialized technical skills; (3) the extensive use of joint public and private endeavors; and (4) the fact that project costs involve the acquisition of capital equipment as opposed to construction of fixed items.

(c) This exception is limited to carpool projects and therefore is not applicable to other Federal-aid projects. The exception does not affect or place the standard Federal-aid funding procedures or real property acquisition procedures and requirements, Part 712, The Acquisition Function.

### PART 657—CERTIFICATION OF SIZE AND WEIGHT ENFORCEMENT

#### Sec.

657.1 Purpose.

657.3 Definition.

657.5 Policy.

657.7 Objective.

657.9 Formulation of a plan for enforcement.

657.11 Evaluation of operations.

657.13 Certification requirement.

657.15 Certification content.

657.17 Certification submittal.

657.19 Effect of failure to certify or to force State laws adequately.

657.21 Procedure for reduction of funding.

#### APPENDIX—GUIDELINES TO BE USED IN DEVELOPING ENFORCEMENT PLANS AND CERTIFICATION EVALUATION

AUTHORITY: Sec. 123, Surface Transportation Assistance Act of 1978, Pub. L. 95-92 Stat. 2689; 23 U.S.C. 127, 141, and 315 CFR 1.48(b).

SOURCE: 45 FR 52368, Aug. 7, 1980, unless otherwise noted.

#### § 657.1 Purpose.

To prescribe requirements for administering a program of vehicle size and weight enforcement on Federal-aid (FA) highways, including the required annual certification by the State.

#### § 657.3 Definition.

"Enforcing" or "enforcement" means all actions by the State to obtain compliance with size and weight requirements by all vehicles operating on the FA Interstate, primary, urban, and secondary systems.

#### § 657.5 Policy.

Federal Highway Administration (FHWA) policy is that each State enforce vehicle size and weight laws to assure that violations are discouraged and that vehicles traversing the highway system do not exceed the limits specified by law. These size and weight

nits are based upon design specifications and safety considerations, and enforcement shall be developed and maintained both to prevent premature deterioration of the highway pavement and structures and to provide a safe driving environment.

#### 7.7 Objective.

The objective of this regulation is development and operation by each State of an enforcement process which identifies vehicles of excessive size and weight and provides a systematic approach to eliminate violations and thus improve conditions.

#### 7.9 Formulation of a plan for enforcement.

(a) Each State shall develop a plan for the maintenance of an effective enforcement process. The plan shall describe the procedures, resources, facilities which the State intends to devote to the enforcement of its vehicle size and weight laws. Each State plan must be accepted by the FHWA and will then serve as a basis by which annual certification of enforcement will be judged for adequacy.

(b) The plan shall discuss the following subjects:

(i) *Facilities and resources.* (1) No program shall be approved which does not utilize a combination of at least two of the following listed devices to enforce size and weight measurement in sufficient quantity to cover the State: fixed platform scales; portable wheel weigher scales; semi-portable or ramp scales; WIM equipment.

(ii) *Staff assigned to the program.* Identified by specific agency. Where more than one State agency has enforcement responsibility, the lead agency should be indicated.

(iii) *Practices and procedures.* (1) Proposed plan of operation, including geographical coverage and hours of operation in general terms.

(2) Policy and practices with respect to overweight violators, including off-loading requirements for divisible loads. In those States in which off-loading is mandatory by law, an administrative variance from the legal requirement must be fully explained. In those States in which off-loading is

permissive administrative guidelines shall be included.

(iii) Policy and practices with respect to penalties, including those for repeated violations. Administrative directives, booklets or other written criteria shall be made part of the plan submission.

(iv) Policy and practices with respect to special permits for overweight. Administrative directives, booklets or other written criteria shall be made part of the plan submission.

(3) *Updating.* Modification and/or additions to the plan based on experience and new developments in the enforcement program. It is recognized that the plan is not static and that changes may be required to meet changing needs.

#### § 657.11 Evaluation of operations.

(a) The State shall submit its initial plan to the FHWA Division Administrator on or before November 1, 1980. Following consultation with the FHWA Regional Administrator, the State will be notified of its acceptance or rejection. The plan shall be updated annually thereafter, preferably on or before July 1, but an alternate date acceptable to both the FHWA and the State, may be chosen if a State's legislative or budgetary cycle is not consonant with July 1. In any event, a State must have an approved plan in effect by October 1 of each year. Failure of a State to submit or update a plan will be deemed to be a failure to certify in accordance with § 657.13.

(b) The FHWA division office shall review the State's operation under the accepted plan on a continuing basis and shall prepare an evaluation report annually. The State will be advised of the results of the evaluation, and of any needed changes either in the plan itself or in its implementation. Copies of the evaluation report and subsequent modifications resulting from the evaluation shall be forwarded through the region to the Washington Headquarters.

#### § 657.13 Certification requirement.

Each State shall certify to the Federal Highway Administrator before January 1 of each year that it is en-

forcing all State laws respecting maximum vehicle size and weight permitted on the FA primary, secondary, and urban systems, including the Interstate System, in accordance with 23 U.S.C. 127. The certification shall be supported by information on activities and results achieved during the preceding 12-month period ending on September 30.

**§ 657.15 Certification content.**

The certification shall consist of the following elements and each element shall be addressed even though the response is negative:

(a) A statement by the Governor of the State, or an official designated by the Governor, that the size and weight laws and regulations in the State governing use of the Interstate System conform to 23 U.S.C. 127.

(b) A statement by the Governor of the State, or an official designated by the Governor, that all State size and weight limits are being enforced on the FA Interstate, primary, urban, and secondary systems. Urban areas not subject to State jurisdiction shall be identified and the statement shall address total FA mileage involved and an analysis of enforcement efforts in such areas.

(c) The certifying statement required by paragraphs (a) and (b) of this section shall be worded as follows: I (name of certifying official), (position title), of the State of \_\_\_\_\_, do hereby certify that all State laws and regulations are being enforced on the FA primary, urban, and secondary systems and the Interstate System in accordance with 23 U.S.C. 127.

(d) A copy of any State law or regulation pertaining to vehicle sizes and weights adopted since the State's last certification and an analysis of the changes made. Those laws and regulations pertaining to special permits and penalties shall be specifically identified and analyzed in accordance with section 123 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599).

(e) A report of State size and weight enforcement efforts during the period covered by the certification which addresses the following:

(1) Actual operations as compared with those forecast by the plan submitted earlier, with particular attention to changes in or deviations from the operations proposed.

(2) Impacts of the process as actually applied, in terms of changes in number of oversize and/or overweight vehicles.

(3) *Measures of activity*—(i) *Vehicle weighed*. Separate totals shall be reported for the annual number of vehicles weighed on fixed scales, on portable scales, on portable scales on WIM when used for enforcement.

(ii) Penalties reported shall include citations issued, civil assessments, incidences of load shifting or offloading of excess weight categorized as follows: violations of axle and/or vehicle weights, or violations resulting from application of the bridge formula.

(iii) *Permits*. The number of permits issued for overweight loads shall be reported. The reported numbers shall specify permits for divisible and indivisible loads and whether issued on trip or annual basis. Permits issued for excess height, length, or width shall not be reported except where necessary for the overwidth movement of a divisible load.

**§ 657.17 Certification submittal.**

(a) The Governor, or an official designated by the Governor, shall each year submit one copy of the certification to the FHWA Division Administrator prior to January 1.

(b) The division office shall forward the original certification to the Office of the Chief Counsel and one copy to the Associate Administrator for Engineering and Traffic Operations. Copies of appropriate evaluations and/or comments shall accompany any transmittal.

**§ 657.19 Effect of failure to certify and enforce State laws adequately.**

Beginning January 1, 1981, if a State fails to certify as required by this regulation or if the Secretary determines that a State is not adequately enforcing all State laws respecting maximum vehicle sizes and weights on FA highways notwithstanding the State's

tion, the FA highway funds apportioned to the State for the next fiscal year shall be reduced by an amount equal to 10 percent of the amount which would otherwise be apportioned to the State under 23 U.S.C. 104, and/or by the amount required pursuant to 23 U.S.C. 127.

#### 721 Procedure for reduction of funds.

(a) If it appears to the Federal Highway Administrator that a State has not submitted a certification conforming to the requirements of this regulation, or that the State is not adequately enforcing State laws respecting minimum vehicle size and weight, including laws applicable to vehicles using the Interstate System with overheights or widths in excess of those provided under 23 U.S.C. 127, the Federal Highway Administrator shall

write in writing a proposed determination of nonconformity, and shall notify the Governor of the State of the proposed determination by certified mail. The notice shall state the reasons for the proposed determination and inform the State that it may, within 30 days from the date of the notice, request a hearing to show why it should not be found in nonconformity. If the State informs the Administrator before the end of the 30-day period that it wishes to attempt to resolve the matter informally, the Administrator may extend the time for requesting a hearing. In the event of a request for informal resolution, the State and the Administrator (or designee) shall promptly schedule a meeting to resolve the matter.

In all instances where the State requests a hearing on the basis of informal resolution, a transcript of the conference shall be made and furnished to the Administrator by the FHWA.

The State may offer any information which it considers helpful to a resolution of the matter, and the Administrator's review at the conference will be made, but not be limited to, legislative actions, including those proposed to remedy deficiencies, budgetary considerations, judicial actions, and proposals for specific actions which will be implemented to bring the State into compliance.

(2) The information produced at the conference may constitute an explanation and offer of settlement and the Administrator will make a determination on the basis of the certification, record of the conference, and other information submitted by the State. The Administrator's final decision together with a copy of the transcript of the conference will be furnished to the State.

(3) If the Administrator does not accept an offer of settlement made pursuant to paragraph (b)(2) of this section, the State retains the right to request a hearing on the record pursuant to paragraph (d) of this section, except in the case of a violation of section 127.

(c) If the State does not request a hearing in a timely fashion as provided in paragraph (a) of this section, the Federal Highway Administrator shall forward the proposed determination of nonconformity to the Secretary. Upon approval of the proposed determination by the Secretary, the fund reduction specified by § 657.19 shall be effected.

(d) If the State requests a hearing, the Secretary shall expeditiously convene a hearing on the record, which shall be conducted according to the provisions of the Administrative Procedure Act, 5 U.S.C. 555 *et seq.* Based on the record of the proceeding, the Secretary shall determine whether the State is in nonconformity with this regulation. If the Secretary determines that the State is in nonconformity, the fund reduction specified by section 567.19 shall be effected.

(e) The Secretary may reserve 10 percent of a State's apportionment of funds under 23 U.S.C. 104 pending a final administrative determination under this regulation to prevent the apportionment to the State of funds which would be affected by a determination of nonconformity.

(f) Funds withheld pursuant to a final administrative determination under this regulation shall be reapportioned to all other eligible States one year from the date of this determination, unless before this time the Secretary determines, on the basis of information submitted by the State and the FHWA, that the State has come into

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conformity with this regulation. If the Secretary determines that the State has come into conformity, the withheld funds shall be released to the State.

(g) The reapportionment of funds under paragraph (e) of this section shall be stayed during the pendency of any judicial review of the Secretary's final administrative determination of nonconformity.

#### APPENDIX—GUIDELINES TO BE USED IN DEVELOPING ENFORCEMENT PLANS AND CERTIFICATION EVALUATION

##### A. Facilities and Equipment

1. Permanent Scales
  - a. Number
  - b. Location (a map appropriately coded is suggested)
  - c. Public-private (if any)
2. Weigh-in-motion (WIM)
  - a. Number
  - b. Location (notation on above map is suggested)
3. Semi-portable scales
  - a. Type and number
  - b. If used in sets, the number comprising a set
4. Portable Scales
  - a. Type and number
  - b. If used in sets, the number comprising a set

##### B. Resources

1. Agencies involved (i.e., highway agency, State police, motor vehicle department, etc.)
2. Personnel—numbers from respective agencies assigned to weight enforcement
3. Funding
  - a. Facilities
  - b. Personnel

##### C. Practices

1. Proposed schedule of operation of fixed scale locations in general terms
2. Proposed schedule of deployment of portable scale equipment in general terms
3. Proposed schedule of deployment of semi-portable equipment in general terms
4. Strategy for prevention of bypassing of fixed weighing facility location
5. Proposed action for implementation of off-loading, if applicable

##### D. Goals

1. Short term—the year beginning October 1 following submission of a vehicle size and weight enforcement plan
2. Medium term—2-4 years after submission of the enforcement plan

3. Long term—5 years beyond the submission of the enforcement plan

4. Provision for annual review and update of vehicle size and weight enforcement plan

##### E. Evaluation

The evaluation of an existing plan compared to goals for strengthening enforcement program, is a difficult task, especially since there is very limited experience nationwide.

The FHWA plans to approach this objective through a continued cooperative effort with State and other enforcement agencies by gathering useful information and experience on elements of enforcement programs that produce positive results.

It is not considered practicable at this time to establish objective minimums, as the number of vehicles to be weighed each State, as a requirement for satisfactory compliance. However, the States will be required to know as many specifics as possible about what measuring tools will be used to state their annual certifications for adequacy.

The above discussion goes to the heart of the question concerning numerical criteria. The assumption that a certain number of weighings will provide a maximum of satisfactory deterrent is not supported. The enforcement of vehicle size and weight laws requires that vehicles be weighed does not logically follow that the more vehicles weighed, the more effective the enforcement program, especially if the vehicles are weighed at a limited number of fixed locations. A "numbers game" does not necessarily provide a deterrent to delinquent overloading. Consistent, vigorous enforcement activities, the certainty of apprehension and of penalty, the adequacy of penalty, even the publicity given these factors, may be greater deterrents than number of weighings alone.

In recognizing that all States are unique in character, there are some similarities between certain States and useful perspectives may be obtained by relating their program elements. Some comparative factors are:

1. Truck registration (excluding permits and panels)
  2. Population
  3. Average Daily Traffic (ADT) for truck on FA highways
  4. To total mileage of Federal-aid highways
  5. Geographic location of the State
  6. Annual truck miles traveled in State
  7. Number of truck terminals (overhead doors)
  8. Vehicle miles of intrastate truck travel
- Quantities relating to the above items may become factors that in the aggregate are descriptive of a State's characteristics and identify States that are similar from a trucking operation viewpoint. This is especially true for States with a high percentage of trucking operation.

ly applicable for States within the same area. For States with similar truck traffic options have been identified in a regional area, another important variable must be considered: the type of weighing equipment that has been or is proposed for predominant use in the States. When data become available on the number of trucks weighed each type of scale (fixed, portable, semi-portable, etc.) some indicators will be developed to relate one State's effort to those of other States. The measures of activity that are a part of each certification submitted will provide a basis for the development of precise numerical criteria by which an enforcement plan and its activities can be evaluated for adequacy.

Previous certifications have provided information from which the following gross capabilities have been derived.

#### *Potential Weighing Capacities*

Permanent scales 60 veh/hr.  
 Weigh-in-motion scales 100 veh/hr.  
 Semi-portable scales 25 veh/hr.  
 Portable scales 3 veh/hr.  
 To meet the mandates of Federal and State laws regarding truck size and weight enforcement, the FHWA desires to become a resource for all States in achieving a successful exchange of useful information. States are more advanced in their enforcement activities. Some have special experience with portable, semi-portable, fixed, weighing-in-motion devices. Others have used permanent scales in combination with concentrated safety inspection programs. The FHWA is interested in information on individual State experiences in these specialized areas as part of initial plan submissions. If such information has recently been furnished to the Washington Headquarters, an appropriate cross reference should be included on the submission. It is the policy of the FHWA to avoid red tape and information volunteered by the States will be of assistance in meeting many needs. The ultimate goal in developing information through the evaluation process is to assemble criteria for a model enforcement program.

## **§ 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS**

Purpose.  
 Policy statement.  
 Definitions.  
 Applicability.  
 National Network criteria.

Sec.

658.11 Additions, deletions, exceptions, and restrictions.

658.13 Length.

658.15 Width.

658.17 Weight.

658.19 Reasonable access.

658.21 Identification of National Network.

#### **APPENDIX A—THE NATIONAL NETWORK**

**AUTHORITY:** Secs. 133, 411, 412, 413 and 416 of Pub. L. 97-424, 96 Stat. 2097, as amended by Pub. L. 98-17, 97 Stat. 59; 23 U.S.C. 315; and 49 CFR 1.48.

**SOURCE:** 49 FR 23315, June 5, 1984, unless otherwise noted.

#### **§ 658.1 Purpose.**

The purpose of this part is to identify a National Network of highways available to vehicles authorized by provisions of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97-424, 96 Stat. 2097), as amended by Pub. L. 98-17, 97 Stat. 59, and to prescribe national policies that govern truck size and weight.

#### **§ 658.3 Policy statement.**

The Federal Highway Administration's (FHWA) policy is to provide a safe and efficient National Network of highways that can safely and efficiently accommodate the large vehicles authorized by the STAA. This network includes the Interstate System plus other qualifying Federal-aid Primary System Highways.

#### **§ 658.5 Definitions.**

(a) *Bridge Gross Weight Formula.* The standard specifying the relationship between axle (or groups of axles) spacing and the gross weight that (those) axle(s) may carry expressed by the formula:

$$W = 500 \left( \frac{LN}{N-1} + 12N + 36 \right)$$

where W=overall gross weight on any group of two or more consecutive axles to the nearest 500 pounds, L=distance in feet between the extreme of any group of two or more consecutive



axles, and N=number of axles in the group under consideration.

(b) *Commercial Motor Vehicle.* For purposes of this regulation a motor vehicle designed or regularly used for carrying freight, merchandise, or more than ten passengers, whether loaded or empty, including buses, but not including vehicles used for vanpools.

(c) *Federal-Aid Primary System.* The Federal-aid Highway System of rural arterials and their extensions into or through urban areas as described in subsection (b) of section 103 of Title 23, U.S.C.

(d) *Interstate System.* The National System of Interstate and Defense Highways described in sections 103(e) and 139(a) of Title 23, U.S.C. For the purpose of this regulation this system includes toll roads designated as Interstate.

(e) *Length Exclusive Devices.* For purposes of this regulation all appurtenances at the front or rear of a commercial motor vehicle semitrailer, or trailer, whose function is related to the safe and efficient operation of the semitrailer or trailer. No device excluded from length determination shall be designed or used for carrying cargo.

(f) *National Network.* The composite of the individual network of highways from each State on which vehicles authorized by the provisions of the STAA are allowed to operate. The network in each State includes the Interstate System and those portions of the Federal-Aid Primary System set out by the FHWA in the Appendix to this part.

(g) *Safety Devices—Width Exclusion.* Federally approved safety devices accorded width exclusion status include rear-view mirrors, turn signal lamps, hand-holds for cab entry/egress and splash and spray suppressant devices. Although not normally considered a safety device, load-induced tire bulge is also excluded from consideration in determining vehicle width.

(h) *Single Axle Weight.* The total weight transmitted to the road by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle. The Federal single axle weight limit

on the Interstate System is 20,000 pounds.

(i) *Special Mobile Equipment.* Every self-propelled vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including military equipment, farm equipment, implements of husbandry, road construction or maintenance machinery, and emergency apparatus which includes fire and police emergency equipment. This list is illustrative and not exclusive of such other vehicles as may fall within the general terms of this definition.

(j) *Tandem Axle Weight.* The weight transmitted to the road by two or more consecutive axles whose centers may be included between two parallel transverse vertical planes spaced more than 40 inches and not more than 60 inches apart, extending across the full width of the vehicle. The Federal tandem axle weight limit on the Interstate System is 34,000 pounds.

(k) *Tractor or Truck Tractor.* A noncargo carrying power unit that operates in combination with a trailer or trailer, except that a tractor and semitrailer engaged in the transportation of automobiles may transport motor vehicles on platform the power unit.

#### § 658.7 Applicability.

Except as limited in § 658.17(a), the provisions of this part are applicable to the National Network and reasonable access thereto. However, nothing in this regulation shall be construed to prevent any State from applying weight and size limits to other ways, except when such limits would deny reasonable access to the National Network.

#### § 658.9 National Network criteria.

(a) The National Network listed in the Appendix to this part is available for use by commercial motor vehicles of the dimensions and configurations described in §§ 658.13 and 658.15.

(b) For those States with detailed lists of individual routes in the Appendix, the routes have been designated on the basis of their general accessibility to the following criteria.

(1) The route is a geometrically typical component of the Federal-Aid Primary System, serving to link principal arteries and densely developed portions of the States.

(2) The route is a high volume route utilized extensively by large vehicles in interstate commerce.

(3) The route does not have any restrictions precluding use by conventional combination vehicles.

(4) The route has adequate geometry to support safe operations, considering sight distance, severity and amount of grades, pavement width, horizontal curvature, shoulder width, clearance and load limits, traffic volumes and vehicle mix, and intersection geometry.

(5) The route consists of lanes designed to be a width of 12 feet or more.

(6) The route does not have any unusual characteristics causing current anticipated safety problems.

For those States where State law provides that STAA authorized vehicles may use all or most of the Federal Primary system, the National Network is no more restrictive than State law. The Appendix contains a comparative summary of the National Network in those States.

# **11 Additions, deletions, exceptions, and restrictions.**

To ensure that the National Network remains substantially intact, FHWA retains the authority to rule on all requested additions to and deletions from the National Network as well as requests for the imposition of new restrictions. FHWA approval or disapproval will constitute the final action of the U.S. Department of Transportation.

**Additions.** Requests for additions to the National Network, including modification, shall be submitted in writing to the appropriate FHWA Division Office. Routes proposed for addition to the National Network shall be assessed on the basis of the criteria of § 658.9. FHWA proposals for addition will be published at least once a year in the *FEDERAL REGISTER* as a Notice of Proposed Rulemaking.

**Deletions.** Changed conditions or additional information may require

the deletion of a designated route or a portion thereof. The deletion of any route or route segment shall require FHWA approval. Requests for deletion of routes from the National Network, including the reason(s) for the deletion, shall be submitted in writing to the appropriate FHWA Division Office. These requests shall be assessed on the basis of the criteria of § 658.9. FHWA proposed deletions will be published in the *FEDERAL REGISTER* as a Notice of Proposed Rulemaking (NPRM).

(c) **Emergency Deletions.** FHWA has the authority to delete any route from the National Network, on an emergency basis, for safety considerations. Emergency deletions are not considered final, and will be published in the *FEDERAL REGISTER* for notice and comment.

(d) **Requests for Deletion.** Requests for deletion should include the following information, where appropriate:

(1) Did the route segment prior to designation carry combination vehicles or 102-inch buses?

(2) Were truck restrictions in effect on the segment on January 6, 1983? If so, what types of restrictions?

(3) What is the safety record of the segment, including current or anticipated safety problems? Specifically, is the route experiencing above normal accident rates and/or accident severities? Does analysis of the accident problem indicate that the addition of larger trucks have aggravated existing accident problems?

(4) What are the geometric, structural or traffic operations features that might preclude safe, efficient operation? Specifically describe lane widths, sight distance, severity and length of grades, horizontal curvature, shoulder width, narrow bridges, bridge clearances and load limits, traffic volumes and vehicle mix, intersection geometrics and vulnerability of roadside hardware.

(5) Is there a reasonable alternate route available?

(6) Are there operational restrictions that might be implemented in lieu of deletion?

(e) **Exceptions.** Those portions of the Interstate System where all commercial motor vehicles were banned on

January 6, 1983, are not included in the National Network.

(f) *Restrictions.* Reasonable restrictions on the use of routes on the National Network by STAA authorized vehicles may be imposed during certain peak hours of travel or on specific travel lanes of multi-lane facilities. Restrictions related to construction zones, seasonal operation, adverse weather conditions or structural or clearance deficiencies may be imposed. States may restrict urban Interstate usage by vehicles authorized under the STAA by imposing detours to circumferential or bypass routes for vehicles not destined to locations within the area to be bypassed. All restrictions imposing urban Interstate detours, and on the use of the National Network based on hours of use by vehicles authorized by the STAA require prior FHWA approval. Requests for such restrictions on the National Network shall be submitted in writing to the appropriate FHWA Division Office. Approval of requests for restrictions will be contingent on the ability to justify significant negative impact on safety, the environment and/or operational efficiency.

#### § 658.13 Length.

(a) The length provisions of the STAA apply only to the following types of vehicle combinations:

- (1) Truck tractor-semitrailer
- (2) Truck tractor-semitrailer-trailer.

The length provisions apply only when these combinations are in use on the National Network or in transit between these highways and terminals or service locations pursuant to § 658.19.

(b) The length provisions referred to in paragraph (a) of this section include the following:

(1) No State shall impose a length limitation of less than 48 feet on a semitrailer operating in a truck tractor-semitrailer combination.

(2) No State shall impose a length limitation of less than 28 feet on any semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination.

(3) Except as noted in paragraph (c) (1) and (c)(2) of this section, no State shall impose an overall length limita-

tion on commercial vehicles operating in truck tractor-semitrailer or truck tractor-semitrailer-trailer combinations.

(4) No State shall prohibit commercial motor vehicles operating in truck tractor-semitrailer-trailer combinations.

(5) No State shall prohibit the operation of semitrailers or trailers which are 28½ feet long when operating in truck tractor-semitrailer-trailer combination if such a trailer or semitrailer was in actual and lawful operation on December 1, 1982, and such combination had an overall length not exceeding 65 feet.

(c) State maximum length limitations for semitrailers operating in a truck tractor-semitrailer combination and trailers and trailers operating in a truck tractor-semitrailer-trailer combination are subject to the following:

(1) If on December 1, 1982, length limitations for the condition described in paragraphs (b)(1) and (b)(2) of this section, were greater than 48 and 28 feet, respectively, the State shall not adopt lesser limits which would be in effect on that date. However, if the State imposed overall length limitations on that date, it may continue to impose the same overall length limitation on vehicles with semitrailer-trailer combinations longer than 48 and 28 feet, respectively.

(2) If on December 1, 1982, length limitations applied only to the overall length of the vehicle combinations described in paragraph (a) of this section, that State shall not adopt a semitrailer or trailer length limitation less than the length of equipment legally operated in that State without a special permit on December 1, 1982.

(3) If on December 1, 1982, length limitations on a semitrailer were described in terms of the distance from the kingpin to rear axle, or end of semitrailer, the operation of any semitrailer that complies with that limitation must be allowed.

(d) *Specialized Equipment—Automobile Transporters.* (1) Automobile transporters are considered specialized equipment. No State shall impose an overall length limit less than 65 feet on automobile transporters. All legal dimensions legally operating on

ember 1, 1982, are grandfathered and continued operation must be allowed.

(2) All length provisions regarding automobile transporters are exclusive of front and rear overhang. Further, a State shall impose a front overhang limitation of less than three (3) feet and a rearmost overhang limitation of less than four (4) feet.

(3) Saddlemount and fullmount mechanisms are defined as specialized equipment. No State shall impose an overall length limit less than 65 feet for saddlemount and fullmount mechanisms.

(4) The length limitations described in this section shall not include the length of exclusive devices defined in § 658.5(e), or which the Secretary may interpret as necessary for safe and efficient operation of commercial motor vehicles, except that no excluded device shall be designed or used for carrying cargo.

(5) Truck tractors containing a secondary box in legal operation on December 1, 1982, shall be permitted to continue to operate, notwithstanding their cargo carrying capacity, throughout their useful life. Proof of legal operation on December 1, 1982, shall rest upon the operator of the equipment.

#### 415 Width.

(a) No State shall impose a width limitation of more or less than 102 inches, or its approximate metric equivalent, 2.6 meters (102.36 inches) for a vehicle operating on the National Highway System, except for the State of Hawaii, which is allowed to keep the vehicle's 108-inch width maximum by the rule of section 416(a) of the STAA.

(b) The provisions of paragraph (a) of this section do not apply to special mobile equipment as defined in § 658.5(i).

(c) Safety devices, as defined in § 658.5(g) or as determined by the Secretary as necessary for the safe and efficient operation of motor vehicles shall not be included in the calculation of width. Safety devices not specifically enumerated in § 658.5(g) may extend beyond 3 inches on each side of a vehicle. No device included in this subsection shall have, by its

design or use, the capability to carry cargo.

(d) Notwithstanding the provisions of this section or any other provision of law, a State may grant special use permits to motor vehicles, including manufactured housing, that exceed 102 inches in width.

#### § 658.17 Weight.

(a) The provisions of the section are applicable to the National System of Interstate and Defense Highways and reasonable access thereto.

(b) The maximum gross vehicle weight shall be 80,000 pounds except where lower gross vehicle weight is dictated by the bridge formula.

(c) The maximum gross weight upon any one axle, including any one axle of a group of axles, or a vehicle is 20,000 pounds.

(d) The maximum gross weight on tandem axles is 34,000 pounds.

(e) No vehicle or combination of vehicles shall be moved or operated on any Interstate highway when the gross weight on two or more consecutive axles exceeds the limitations prescribed by the following formula, referred to as the Bridge Gross Weight Formula:

$$W = 500 \left( \frac{LN}{N-1} + 12N + 36 \right)$$

except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axle is 36 feet or more. In no case shall the total gross weight of a vehicle exceed 80,000 pounds.

(f) The weights in paragraphs (b), (c), (d), and (e), of this section shall be inclusive of all tolerances, enforcement or otherwise, with the exception of a scale allowance factor when using portable scales (wheel-load weighers). The current accuracy of such scales is generally within 2 or 3 percent of actual weight, but in no case should an allowance in excess of 5 percent be applied. Penalty or fine schedules which impose no fine up to a specified threshold, i.e., 1,000 pounds, will be

considered as tolerance provisions not authorized by 23 U.S.C. 127.

(g) States may issue special permits without regard to the axle, gross, or formula requirements for vehicles and loads which cannot be dismantled or divided (non-divisible loads) without incurring substantial cost or delay. All permits for vehicles carrying divisible loads in excess of 80,000 pounds must conform to either Federal or grandfathered axle and bridge spacing requirements as approved by the FHWA.

(h) The provisions of paragraphs (b), (c), and (d) of this section shall not apply to single, or tandem axle weights, or gross weights legally authorized under State law on July 1, 1956. The group of axle requirements established in this section shall not apply to vehicles legally grandfathered under State groups of axle tables or formulas on January 4, 1975.

#### § 658.19 Reasonable access.

(a) All States must allow vehicles with dimensions authorized by the STAA reasonable access between the National Network described in the regulation and terminals, and facilities for food, fuel, repairs, and rest. For household goods carriers, the length and width provisions require reasonable access to points of loading and unloading in addition to terminals and facilities as listed above.

(b) All States shall make available to commercial motor vehicle operators information regarding their reasonable access provisions to and from the National Network.

#### § 658.21 Identification of National Network.

(a) To identify the National Network, a State may sign the routes or provide maps of lists of highways describing the National Network.

(b) Exceptional local conditions on the National Network shall be signed. All signs shall conform to the Manual on Uniform Traffic Control Devices. Exceptional conditions shall include but not be limited to:

(1) Operational restrictions designed to maximize the efficiency of the total traffic flow, such as time of day prohibitions, or lane use controls.

(2) Geometric and structural restrictions, such as vertical clearance posted weight limits on bridges, or restrictions caused by construction operations.

(3) Detours from urban Interstate routes to bypass of circumferential routes for commercial motor vehicles not destined for the urban area to be bypassed.

#### APPENDIX A—THE NATIONAL NETWORK

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No. | From                                                            | To                                                  |
|------------------|-----------------------------------------------------------------|-----------------------------------------------------|
| <b>Alabama</b>   |                                                                 |                                                     |
| US 431 .....     | AL 210 in Dothan .....                                          | US 431/AL 179 Headland.                             |
| US 431 .....     | I-20 Anniston .....                                             | I-59 Gadsden.                                       |
| US 431 .....     | AL 77 Attalla .....                                             | AL 79 near Columbus (C. Marshall Co.) Tennessee St. |
| US 431 .....     | Co Rd 6 near New Hope in Madison County.                        | Jackson County Road 33, near Hollywood.             |
| US 72 .....      | Mississippi St. Line .....                                      | AL 14 north of Prattville.                          |
| US 31 .....      | AL 152 Montgomery .....                                         | I-65 north of Kimberly.                             |
| US 31 .....      | End of I-65 north of Birmingham.                                | I-59 Birmingham.                                    |
| US 78 .....      | Beginning of four-lane west of AL 5 at Jasper in Walker County. | I-20 west of Ld.                                    |
| US 78 .....      | End of I-20 in Irondale.                                        | Eoline (west of Brent).                             |
| US 82 .....      | Coker (west of Northport).                                      | US 31 Prattville.                                   |
| US 82 .....      | AL 206 Prattville .....                                         | AL 152 Montgomery.                                  |
| US 80 .....      | AL 14 west of Selma .....                                       | AL 210 Dothan.                                      |
| US 84 .....      | AL 92 (east of Daleville).                                      | End of four-lane of Dothan.                         |
| US 84 .....      | AL 210 Dothan .....                                             | Sunflower in Washington Co.                         |
| US 43 .....      | I-65 north of Mobile .....                                      | US 72 Tusculum.                                     |
| US 43 .....      | AL 5 near Russellville.                                         | Tennessee St. U.                                    |
| US 43 .....      | US 72 Florence .....                                            | Georgia St. Line.                                   |
| US 29 .....      | Fairfax .....                                                   | US 231 Huntsville.                                  |
| AL 20 .....      | US 72 Tusculum .....                                            | I-65 north of Ala.                                  |
| AL 21 .....      | US 31 at Atmore .....                                           | Jacksonville.                                       |
| AL 21 .....      | US 431 Anniston .....                                           | AL 22 at Alexander City.                            |
| US 280 .....     | US 31 Mountain Brook.                                           | Georgia St. Line.                                   |
| US 280 .....     | I-85 Opelika .....                                              | End of four-lane Fairhope.                          |
| US 98 .....      | I-10 Daphne .....                                               | AL 210 Dothan.                                      |
| US 231 .....     | Florida St. Line .....                                          | AL 152 Montgomery.                                  |
| US 231 .....     | AL 210 Dothan .....                                             | End of 4-lane of Wetumpka.                          |
| US 231 .....     | AL 152 Montgomery .....                                         | US 431 Huntsville.                                  |
| US 231 .....     | Arab .....                                                      |                                                     |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways.]

| State route No. | From                                   | To                        |
|-----------------|----------------------------------------|---------------------------|
| 67              | I-65 near Priceville                   | AL 20 west of Decatur.    |
| 77              | I-59 Gadsden                           | US 431 Attalla.           |
| 79              | I-59 Birmingham                        | Pinson.                   |
| 152             | US 31 (north of Montgomery).           | I-65 north of Montgomery. |
| 210             | Dothan Circle (Beltway around Dothan). |                           |
| 248             | US 84 Enterprise                       | FL Rucker.                |
| 249             | FL Rucker                              | US 231.                   |

vehicles transporting cargo that is prohibited from using the George C. Wallace Tunnel on Interstate Route 10 in the City of Mobile:

|                         |      |                               |
|-------------------------|------|-------------------------------|
| Water Street            | I-10 | Telegraph Road (US-43).       |
| Water Street            |      | Bay Bridge Road (Alt. US-90). |
| Telegraph Road (US-43). |      | I-10.                         |

Alaska

|                     |                         |
|---------------------|-------------------------|
| Anchorage           | Palmer.                 |
| Fairbanks           | Delta Jct.              |
| Palmer at Jct. AK 1 | Fairbanks at Jct. AK 2. |

Arizona

|                    |                      |
|--------------------|----------------------|
| I-10 Phoenix       | AZ 87 Mesa.          |
| I-10 Brenda        | I-17 Phoenix.        |
| AZ 87 Mesa         | Globe.               |
| US 89 Prescott     | I-17.                |
| US 80 Globe        | New Mexico St. Line. |
| AZ 92 Bisbee       | New Mexico St. Line. |
| I-10 Picacho       | AZ 87.               |
| I-8 Gila Bend      | I-10.                |
| I-10 Avondale      | I-17.                |
| AZ 84 Picacho      | AZ 387.              |
| AZ 93 Chandler     | US 60.               |
| I-10               | AZ 87 Chandler.      |
| I-10               | AZ 387.              |
| AZ 87 Coolidge     | US 89 Florence.      |
| AZ 187             | AZ 87.               |
| I-10 Tucson        | US 60.               |
| AZ 89 Prescott     | I-40.                |
| I-40               | Utah St. Line.       |
| I-10               | AZ 92 Sierra Vista.  |
| AZ 90 Sierra Vista | US 80 Bisbee.        |
| Mexican Border     | I-8 Yuma.            |
| US 89 Tuba City    | New Mexico St. Line. |
| AZ 69 Dawsey       | I-17.                |
| Mexican Border     | I-19 Nogales.        |
| US 160             | New Mexico St. Line. |
| I-10               | US 70 Safford.       |
| US 60              | I-40.                |
| Mexican Border     | US 60 Douglas.       |
| US 160 Kayenta     | Utah St. Line.       |
| US 60              | I-40.                |
| Show Low           | New Mexico St. Line. |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways.]

| Posted route No.                                                                                                                                                                                                      | From             | To                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|------------------------|
| <b>Arkansas</b>                                                                                                                                                                                                       |                  |                        |
| Under Arkansas State statute, all Federal-aid Primary Routes are available to commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act of 1982, with the following exceptions: |                  |                        |
| AR 22                                                                                                                                                                                                                 | I-540 Fort Smith | US 64.                 |
| US 64                                                                                                                                                                                                                 | AR 255           | AR 22.                 |
| AR 59                                                                                                                                                                                                                 | I-40 Van Buren   | Main Street Van Buren. |
| US 71                                                                                                                                                                                                                 | US 271           | AR 22.                 |
| In addition Arkansas has made available all Federal-aid secondary routes subject to weight and speed limit restrictions with the following exception:                                                                 |                  |                        |
| AR 88                                                                                                                                                                                                                 | AR 8 Mensa       | Oklahoma St. Line.     |
| AR 159                                                                                                                                                                                                                | US 65            | AR 144.                |

California

|                                 |                            |                           |
|---------------------------------|----------------------------|---------------------------|
| CA 2                            | I-5                        | I-210 in Los Angeles.     |
| San Bernardino Freeway (CA 10). | US 101                     | I-5 in Los Angeles.       |
| CA 110                          | I-10                       | US 101 in Los Angeles.    |
| CA 15                           | I-5                        | I-805 in San Diego.       |
| CA 22                           | I-405 in Seal Beach        | CA 55 in Orange.          |
| CA 24                           | I-580 in Oakland           | I-680 in Walnut Creek.    |
| CA 52                           | I-5                        | I-805 in San Diego.       |
| CA 55                           | I-405 in Costa Mesa        | CA 91 in Anaheim.         |
| CA 57                           | I-5 in Santa Ana           | I-210 in Pomona.          |
| CA 60                           | I-10 in Los Angeles        | I-10 in Beaumont.         |
| CA 71                           | I-210                      | CA 60 in Pomona.          |
| CA 78                           | I-5 in Carlsbad            | I-15 in Escondido.        |
| Bus I-80                        | US 50/CA 99 in Sacramento. | I-80 Near Watt Ave.       |
| CA 85                           | I-280 near San Jose        | CA 101 in Mountain View.  |
| CA 91                           | I-110 in Los Angeles       | CA 60/I-215 in Riverside. |
| CA 92                           | I-280 Near San Mateo.      | CA 17 (I-880) in Hayward. |
| CA 94                           | I-5                        | CA 125 in San Diego.      |
| CA 99                           | I-5 Near Wheeler Ridge.    | US 50 in Sacramento.      |
| US 101                          | I-5 in Los Angeles         | I-80 in San Francisco.    |
| CA 117                          | I-5                        | I-805 in San Diego.       |
| CA 118                          | I-405 in Los Angeles       | I-210 in San Fernando.    |
| CA 125                          | CA 94                      | I-8 in La Mesa.           |
| CA 133                          | I-405                      | I-5 Near El Toro.         |
| CA 134                          | US 101 in Los Angeles.     | I-210 in Pasadena.        |
| CA 163                          | I-8                        | I-15 in San Diego.        |
| CA 170                          | US 101                     | I-5 in Los Angeles.       |
| CA 215                          | I-15 Near Temecula         | CA 60 Near Riverside.     |
| CA 14                           | I-5 Near San Fernando.     | US 395 Near Ridgecrest.   |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No. | From                          | To                                         |
|------------------|-------------------------------|--------------------------------------------|
| CA 58 .....      | CA 99 in Bakersfield .....    | I-15 in Barstow.                           |
| CA 198 .....     | I-5 Coalinga .....            | CA 99 Visalia.                             |
| US 395 .....     | I-15 Near Victorville .....   | Nevada St. Line.                           |
| US 95 .....      | I-40 Near Needles .....       | Nevada St. Line.                           |
| US 6 .....       | US 395 Bishop .....           | Nevada St. Line.                           |
| US 50 .....      | Bus I-80/CA 99 in Sacramento. | Sly Park Rd. Interchange in Pollock Pines. |

NOTE: The Richmond-San Rafael Bridge (Toll) is a completed section of I-580. However, the section connecting to I-80 on the east is not completed, and US 101 on the west is not on the designated National Network. Therefore, the bridge is not available for through truck traffic by the larger vehicles allowed by the STAA. Information relative to access to terminals along CA 17 between I-80 and the bridge may be obtained by contacting the California Department of Transportation, 1120 N Street, Sacramento, California 95814, telephone (916) 445-5851.

The following routes were approved as part of the Interstate System as follows: I-710 (CA 7) from CA 1 to I-10 on September 26, 1983, I-880 (CA 17) from I-280 to I-80 and I-238 (CA 238) from I-580 to CA 17 on May 18, 1983.

## Colorado

Under Colorado State statute, all Federal-aid Primary Routes are available to commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act of 1982 with the following exceptions.

US 40 ..... Jct. I-70 Near Empire .. Winter Park.  
US 550 ..... Jct. CO 110 Silverton .. Jct. CO 361 Ouray.

In addition Colorado has made available all other US and State numbered routes with the following exceptions:

|              |                               |                                |
|--------------|-------------------------------|--------------------------------|
| CO 116 ..... | Jct. CO 69 .....              | Kansas St. Line.               |
| CO 7 .....   | CO 72 .....                   | Jct. US 36.                    |
| CO 72 .....  | Jct. CO 7 .....               | Jct. CO 119.                   |
| CO 119 ..... | Jct. US 6 .....               | Jct. CO 7.                     |
| CO 6 .....   | Jct. I-70 Near Dillon .....   | Jct. I-70 Near Silver Plume.   |
| CO 82 .....  | Aspen .....                   | Jct. US 24.                    |
| CO 133 ..... | Jct. CO 92 Hotchkiss .....    | Jct. CO 82 Carbondale.         |
| CO 92 .....  | Jct. US 50 Sapinero .....     | Jct. CO 133 Hotchkiss.         |
| CO 149 ..... | US 160 Near South Fork .....  | Jct. US 50.                    |
| CO 470 ..... | Jct. US 85 .....              | Jct. I-25.                     |
| CO 65 .....  | Jct. CO 92 .....              | Jct. CO 330.                   |
| CO 114 ..... | Jct. US 50 .....              | Jct. US 285.                   |
| CO 131 ..... | Jct. CO 134 at Toponas .....  | Jct. US 6 at Wolcott.          |
| CO 83 .....  | Jct. CO 86 at Franktown ..... | Jct. I-25 North of Colo. Spgs. |

## Connecticut

|            |                           |                      |
|------------|---------------------------|----------------------|
| CT 2 ..... | Columbus Blvd., Hartford. | I-395 Norwich.       |
| CT 8 ..... | I-95 Bridgeport .....     | Jct. I-84 Waterbury. |
| CT 9 ..... | I-95 Old Saybrook .....   | Jct. I-91 Cromwell.  |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No. | From                                                        | To                                                  |
|------------------|-------------------------------------------------------------|-----------------------------------------------------|
| CT 20 .....      | Jct. CT 401 (Bradley International Airport, Windsor Locks). | I-91 Windsor.                                       |
| CT 401 .....     | Jct. CT 20 Windsor Locks.                                   | Bradley International Airport Access Windsor Locks. |
| CT 8 .....       | I-84 Waterbury .....                                        | US 44 Winsted.                                      |

NOTE: I-395 (CT 52) was approved as part of the Interstate System on April 18, 1983.

## Delaware

|              |                                       |                    |
|--------------|---------------------------------------|--------------------|
| US 13 .....  | Jct. with I-495, South of Wilmington. | Maryland St. Line. |
| US 301 ..... | Jct. US 13 at Boyd's Corner.          | Maryland St. Line. |
| US 113 ..... | Jct. US 13 at Dover .....             | Maryland St. Line. |
| US 40 .....  | Jct. US 13 at State Road.             | Maryland St. Line. |

## District of Columbia

|                                    |             |                    |
|------------------------------------|-------------|--------------------|
| Anacostia Freeway/ Kenilworth Ave. | I-295 ..... | Maryland St. Line. |
|------------------------------------|-------------|--------------------|

## Florida

|                         |                                         |                       |
|-------------------------|-----------------------------------------|-----------------------|
| US 27 .....             | Fla. Turnpike Extension.                | FL 84 at Andytown.    |
| US 27 .....             | South Bay .....                         | Leesburg.             |
| US 27/US 441 .....      | Leesburg .....                          | Belleview.            |
| US 27/US 301 .....      | Belleview .....                         | Ocala.                |
| US 27 .....             | US 301 in Ocala .....                   | I-75.                 |
| US 301 .....            | SR 24 in Waldo .....                    | I-10.                 |
| FL 24 .....             | SR 331 in Gainesville .....             | US 301 in Waldo.      |
| FL 263 .....            | US 90 West of Tallahassee.              | I-10.                 |
| FL 331 .....            | I-75 (South of Gainesville).            | FL 24.                |
| US 41 .....             | Big Bend Road (CR 672) near Adamsville. | I-4 Tampa.            |
| CR 672 (Big Bend Road). | US 41 near Adamsville.                  | I-75 near Adamsville. |
| FL 202 .....            | In Jacksonville from I-95.              | FL A-1-A.             |
| Florida Tpk. ....       | South end of Homestead Extension.       | I-75 at Wildwood.     |
| FL 528/FL 407.          | I-4 at Orlando .....                    | Cape Canaveral.       |
| 20th Street Expressway. | In Jacksonville at I-95.                | Adams Street.         |
| FL 397 .....            | Entrance Eglin AFB .....                | FL 85 Valparaiso.     |
| FL 85 .....             | FL 397 Valparaiso .....                 | I-10 near Crestview.  |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways.]

| Posted route No. | From                                                                                                                                                                                                   | To |
|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 78               | Aligator Alley (FL 84) from Golden Gate to Andytown (designated part of the Interstate system but is signed Access from I-95 to the Golden Gate Toll Plaza not be available until late 1984.           |    |
|                  | —This is not an FAP route. However, this route has been identified by the Florida Department of Transportation as available to the larger vehicles on a temporary basis during the completion of I-75. |    |

Georgia

|                              |                                |
|------------------------------|--------------------------------|
| I-285, near Atlanta          | GA 60.                         |
| I-85                         | US 441 near Cornelia.          |
| US 27 at Rome                | I-75 near Emerson.             |
| I-16                         | North to Gray.                 |
| US 17/US 84, near Brunswick. | Northerly to I-95.             |
| Alabama St. Line             | Fort Benning.                  |
| Dawson                       | I-75 Tifton.                   |
| US 82 Albany                 | I-75 near Cordele.             |
| I-16                         | North of Statesboro.           |
| I-85 easterly                | near Lawrenceville (5 miles).  |
| I-95 Monticello              | GA 204 Savannah.               |
| I-85/I-285 Interchange.      | East to Welcome All Road.      |
| Valleybrook Rd.              | SR 10.                         |
| End of I-185                 | South to US 280 near Columbus. |
| I-95                         | Fayetteville.                  |
| US 27                        | I-75.                          |
| I-75                         | US 411.                        |
| GA 411                       | Ellerslie.                     |
| I-75                         | Near Barnsville.               |
| US 82                        | Near Pelham.                   |
| I-75                         | Warner Robins.                 |
| Waycross                     | I-95.                          |
| GA 138                       | GA 8 near Athens.              |
| I-20                         | US 78.                         |
| Rome                         | I-75 Calhoun.                  |

Hawaii

|                                 |                            |
|---------------------------------|----------------------------|
| Vineyard Boulevard              | Kawainui Bridge in Kailua. |
| Nimitz Highway                  | Kahekehi Highway (83).     |
| Sand Island Park.               | Nimitz Highway (92).       |
| Kailua-Waimanalo Junction (61). | Aiea.                      |
| Weed Junction                   | Kalanienesle Highway (61). |
| Pearl Harbor-Main Gate.         | Kaleakaua Avenue.          |
| Beginning of Route H-1.         | Makaha Bridge.             |
| Route H-1                       | Campbell Harbor.           |
| Pearl Harbor Interchange.       | Weed Junction.             |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways.]

| Posted route No. | From                        | To                               |
|------------------|-----------------------------|----------------------------------|
| 78               | Route H-1 at Middle Street. | Kamehameha Highway (99) in Aiea. |

Idaho

|                   |                              |                           |
|-------------------|------------------------------|---------------------------|
| US 2              | Dover                        | Sundpoint, Jct. US 95.    |
| US 2              | Jct. US 95, Bonners Ferry.   | Montana State Line.       |
| I-15B             | S. Idaho Falls, I.C.         | Broadway I.C.             |
| ID 16             | Jct. ID 44                   | Emmett.                   |
| ID 19             | Jct. US 95, Wilder           | Jct. US 30, Caldwell.     |
| US 20             | Oregon Line                  | Jct. I-84, Broadway I.C.  |
| US 20             | Mountain Home, Jct. I-84.    | Montana Line.             |
| ID 22             | Jct. ID 33                   | Jct. I-15, Dubois.        |
| ID 24             | Jct. I-84, Heyburn I.C.      | Shoshone, Jct. US 93.     |
| ID 25             | Jct. I-84, W. Jermone.       | Jct. I-84, Declo I.C.     |
| US 26             | Jct. I-84, Bliss             | Jct. US 93, Shoshone.     |
| US 26             | Jct. US 20, (AEC Jct.).      | Blackfoot, Jct. I-15.     |
| ID 27             | Oakley                       | Jct. ID 25, Paul.         |
| ID 28             | Jct. ID 33, Mud Lake         | Jct. US 93, Salmon.       |
| US 30             | Jct. US 95, Fruitland        | Jct. I-84, New Plymouth.  |
| US 30             | Jct. I-84, Caldwell          | Jct. I-84, E. Nampa I.C.  |
| US 30             | Bliss                        | Jct. I-84, Heyburn I.C.   |
| US 30             | Jct. I-15, McCammon          | Wyoming Line.             |
| ID 33             | Jct. US 20/26 East Arco.     | Wyoming Line.             |
| ID 34             | Utah Line                    | Conda.                    |
| ID 39             | American Falls, Jct. I-86.   | Jct. US 28, Moreland.     |
| ID 40             | Jct. I-15                    | Downey, Jct. US 91.       |
| ID 41             | Jct. I-90, Post Falls        | Newport, Washington US 2. |
| ID 44             | Jct. I-84                    | Boise, Jct. US 20.        |
| ID 46             | Jct. I-84, Wendell           | Jct. US 20, E. Fairfield. |
| ID 46             | Jct. I-15, Roberts           | Jct. US 20, Rigby.        |
| ID 50             | Jct. US 30, east Twin Falls. | Jct. ID 25.               |
| ID 51             | Nevada Line                  | Mountain Home.            |
| ID 53             | Washington Line              | Jct. US-95, Ganwood.      |
| ID 55             | Jct. US 95, Marsing          | Nampa, Jct. I-84.         |
| ID 55             | Jct. US 20                   | Eagle, Jct. ID 44.        |
| ID 62 (was ID 84) | Craigmont                    | Nez Perce.                |
| ID 67             | Mountain Home AFB            | Mountain Home.            |
| ID 74             | Jct. US 93                   | Twin Falls.               |
| ID 75             | Shoshone                     | Keetchum.                 |
| ID 77             | Declo, Jct. ID 81            | Jct. I-84.                |
| ID 78             | Marsing, Jct. ID 55          | ID 51.                    |
| ID 79             | Jermone, Jct. ID 25          | Jct. I-84.                |
| ID 81             | Malta                        | Burley, Jct. US 30.       |
| I-84B             | W. Mountain Home I.C.        | E. Mountain Home I.C.     |



# APPENDIX A—THE NATIONAL NETWORK— Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No. | From                           | To                        |
|------------------|--------------------------------|---------------------------|
| ID 87 .....      | Jct. US 20 .....               | Montana Line.             |
| US 89 .....      | Utah Line .....                | Montpelier.               |
| US 91 .....      | Utah Line .....                | Jct. I-15, Virginia I.C.  |
| US 91 .....      | Pocatello, Jct. I-86 .....     | I-15B, S. Idaho Falls.    |
| US 93 .....      | Nevada Line .....              | Arco.                     |
| US 95 .....      | Oregon Line .....              | Weiser.                   |
| US 95 .....      | Grangeville .....              | Moscow.                   |
| US 95 .....      | Coeur d'Alene, Jct. I-90 ..... | Jct. US 2, Bonners Ferry. |

## Illinois

|                   |                              |                              |
|-------------------|------------------------------|------------------------------|
| IL Toll Highways. | All Routes .....             |                              |
| IL 5 .....        | I-80 .....                   | US 30.                       |
| IL 6 .....        | I-74 .....                   | IL 88.                       |
| US 20 .....       | Ben. US 20 west of Rockford. | I-90.                        |
| US 36 .....       | North of Winchester .....    | I-55.                        |
| US 50 .....       | East of Lawrenceville .....  | Indiana St. Line.            |
| US 51 .....       | Ben. US 51 south of Decatur. | I-72.                        |
| US 51 .....       | IL 5 .....                   | US 20.                       |
| IL 53 .....       | Army Trail Rd. ....          | IL 68.                       |
| IL 92 .....       | I-280 .....                  | US 67.                       |
| IL 336 .....      | IL 57 .....                  | US 24.                       |
| IL 394 .....      | IL 1 .....                   | I-80.                        |
| IL 1 .....        | IL 146 .....                 | US 24.                       |
| IL 2 .....        | US 30 .....                  | US 20.                       |
| IL 3 .....        | I-57 .....                   | I-55.                        |
| IL 3 .....        | I-55 .....                   | US 67.                       |
| IL 4 .....        | IL 13/127 .....              | I-55.                        |
| IL 5 .....        | I-74 .....                   | I-80.                        |
| US 6 .....        | IL 7 .....                   | I-80/94.                     |
| US 6 .....        | IL 47 .....                  | I-55.                        |
| IL 7 .....        | IL 53 .....                  | US 6.                        |
| IL 9 .....        | US 67 .....                  | IL 41.                       |
| IL 9 .....        | IL 78 .....                  | IL 121.                      |
| IL 10 .....       | I-55 .....                   | US 51.                       |
| US 12 .....       | IL 120 .....                 | I-290.                       |
| US 12 .....       | I-55 .....                   | Indiana St. Line.            |
| IL 13 .....       | IL 15 .....                  | Harrisburg.                  |
| US 14 .....       | Wisconsin St. Line .....     | IL 22.                       |
| US 14 .....       | IL 53 .....                  | I-94.                        |
| IL 14 .....       | US 51 .....                  | Indiana St. Line.            |
| IL 15 .....       | I-55 .....                   | East junction IL 13.         |
| IL 16 .....       | IL 267 .....                 | US 67.                       |
| IL 16 .....       | I-55 .....                   | IL 1.                        |
| IL 17 .....       | I-55 .....                   | IL 114.                      |
| IL 18 .....       | US 51 .....                  | IL 23.                       |
| IL 19 .....       | IL 50 .....                  | I-90/94.                     |
| US 20 .....       | Iowa St. Line .....          | Ben. US 20 west of Rockford. |
| US 20 .....       | US 51 east of Rockford.      | I-290.                       |
| Bus. US 20 .....  | IL 31 .....                  | US 20 (east of Elgin).       |
| IL 21 .....       | US 14 .....                  | IL 120.                      |
| IL 22 .....       | US 14 .....                  | US 12.                       |
| IL 23 .....       | IL 18 .....                  | Wisconsin St. Line.          |
| US 24 .....       | Missouri St. Line .....      | Indiana St. Line.            |
| IL 26 .....       | IL 5 .....                   | IL 2.                        |
| IL 26 .....       | IL 64 .....                  | US 20.                       |
| IL 29 .....       | US 51 .....                  | I-180.                       |
| US 30 .....       | Iowa St. Line .....          | IL 5 west of Rock Falls.     |

# APPENDIX A—THE NATIONAL NETWORK— Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No. | From                       | To                      |
|------------------|----------------------------|-------------------------|
| US 30 .....      | IL 5 east of Rock Falls.   | IL 53.                  |
| US 30 .....      | IL 43 .....                | IL 50.                  |
| US 30 .....      | IL 394 .....               | Indiana St. Line        |
| IL 31 .....      | Ben. US 20 .....           | Wisconsin St. Line      |
| IL 33 .....      | I-57 .....                 | IL 1.                   |
| US 34 .....      | Iowa St. Line .....        | IL 68.                  |
| US 34 .....      | IL 71 .....                | IL 58.                  |
| US 34 .....      | IL 53 .....                | I-294.                  |
| IL 34 .....      | I-57 .....                 | IL 13.                  |
| US 36 .....      | Missouri St. Line .....    | North of Win.           |
| US 36 .....      | I-72 west of Decatur ..... | Indiana St. Line        |
| IL 38 .....      | IL 47 .....                | I-294.                  |
| US 41 .....      | I-84 near Northbrook ..... | I-84 near the Wisconsin |
| IL 41 .....      | IL 9 .....                 | IL 116.                 |
| IL 43 .....      | US 30 .....                | IL 60.                  |
| US 45 .....      | I-24 E of Metropolis ..... | I-70.                   |
| US 45 .....      | I-80 .....                 | I-55.                   |
| US 45 .....      | I-280 .....                | North junction 21.      |
| US 45 .....      | IL 173 .....               | Wisconsin St. Line      |
| IL 47 .....      | US 136 .....               | US 14.                  |
| IL 48 .....      | I-55 .....                 | US 51.                  |
| US 50 .....      | Missouri St. Line .....    | IL 3.                   |
| US 50 .....      | I-84 .....                 | East of Lawrenceville   |
| IL 50 .....      | US 30 .....                | IL 19.                  |
| US 51 .....      | IL 146 .....               | Ben. US 51 of Decatur.  |
| US 51 .....      | I-72 .....                 | I-74.                   |
| US 51 .....      | I-55 .....                 | IL 5.                   |
| US 51 .....      | I-90 .....                 | Wisconsin St. Line      |
| IL 53 .....      | I-80 .....                 | Army Trail Rd.          |
| US 54 .....      | Missouri St. Line .....    | US 36.                  |
| I-55 Ben. Loop.  | Around Bloomington .....   |                         |
| IL 56 .....      | IL 47 .....                | IL 5.                   |
| IL 57 .....      | US 36 .....                | US 24.                  |
| IL 58 .....      | IL 59 .....                | US 45.                  |
| IL 59 .....      | I-55 .....                 | IL 22.                  |
| IL 60 .....      | IL 43 .....                | US 41.                  |
| IL 64 .....      | IL 26 .....                | US 51.                  |
| IL 64 .....      | IL 23 .....                | IL 50.                  |
| US 67 .....      | Missouri St. Line .....    | Iowa St. Line           |
| IL 68 .....      | US 12 .....                | I-94.                   |
| IL 71 .....      | I-80 .....                 | US 34.                  |
| IL 72 .....      | IL 59 .....                | US 45.                  |
| IL 78 .....      | US 67 .....                | IL 125.                 |
| IL 78 .....      | IL 9 .....                 | I-80.                   |
| IL 78 .....      | IL 5 .....                 | IL 64.                  |
| IL 78 .....      | US 20 .....                | Wisconsin St. Line      |
| IL 83 .....      | US 30 .....                | Torrence Ave            |
| IL 83 .....      | 15 9th St. ....            | I-94.                   |
| IL 83 .....      | US 45 .....                | US 12.                  |
| IL 88 .....      | US 34 .....                | I-5.                    |
| IL 92 .....      | US 67 .....                | I-74.                   |
| IL 97 .....      | IL 125 .....               | IL 29.                  |
| IL 100 .....     | US 36 .....                | IL 104.                 |
| IL 104 .....     | US 24 .....                | US 67.                  |
| IL 108 .....     | US 267 .....               | IL 4.                   |
| IL 111 .....     | US 67 .....                | I-55.                   |
| IL 114 .....     | IL 17 .....                | Indiana St. Line        |
| IL 116 .....     | IL 41 .....                | I-474.                  |
| IL 116 .....     | I-74 .....                 | I-55.                   |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

the National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways.]

| Route No. | From              | To                |
|-----------|-------------------|-------------------|
| 7         | I-74              | IL 116.           |
| 1         | IL 1              | Indiana St. Line. |
| 1         | IL 31             | IL 131.           |
| 1         | I-74              | I-72.             |
| 1         | US 36             | IL 16.            |
| 1         | US 67             | IL 97.            |
| 1         | IL 13             | IL 16.            |
| 1         | IL 1              | IL 33.            |
| 6         | US 24             | IL 1.             |
| 1         | IL 111            | I-55.             |
| 1         | US 45             | Indiana St. Line. |
| 1         | Missouri St. Line | I-24.             |
| 1         | Elizabethtown     | IL 1.             |
| 1         | IL 3              | IL 13.            |
| 1         | IL 1              | Indiana St. Line. |
| 1         | Missouri St. Line | IL 4.             |
| 1         | IL 13             | US 51.            |
| 1         | IL 3              | IL 15.            |
| 1         | IL 7              | IL 83.            |
| 1         | IL 251            | US 41.            |
| 1         | US 20             | IL 47.            |
| 1         | US 20             | IL 75.            |
| 1         | US 336            | IL 57.            |
| 1         | I-94              | US 12/20.         |
| 1         | IL 394            | IL 83.            |

The first 12 route descriptions (IL Toll highways through IL 394) are classified by current Illinois law as Class I and open to all commercial vehicles defined by the law for 1982. The remaining route descriptions are classified by Illinois as Class II and are restricted. Illinois restricts Class II highways to a maximum allowable gross weight of 55 feet for a tractor-semitrailer combination and 5 feet for a tractor-semitrailer-trailer combination.

## Indiana

Indiana State statute, all Federal-aid Primary Routes are available to commercial vehicles with the dimensions regulated by the Surface Transportation Assistance Act of 1978. Some local restrictions may apply. In addition, the State has made available all other public roads to the authorized vehicles. Local restrictions may apply.

## Iowa

|                           |                           |
|---------------------------|---------------------------|
| North Jct. IA 16.         | West Jct. IA 78.          |
| North Jct. IA 92.         | IA 22.                    |
| North Jct. US 6 & US 218. | I-80.                     |
| SCL Marietta.             | Jct. US 151.              |
| Missouri River Bridge     | Jct. IA 25.               |
| Decatur Co. Line          | Mississippi River Bridge. |
| South Dakota.             | North Jct. IA 12.         |
| Jct. US 75                | Jct. IA 7.                |
| East Jct. IA 17           | West Jct. IA 13.          |
| Jct. IA 3                 | East Jct. US 18.          |
| SCL Wallingford           | IA 9.                     |
| Jct. IA 2                 | Jct. I-35.                |
| Nebraska                  | Jct. I-80.                |
| Jct. IA 4B                | South Jct. US 71.         |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways.]

| Posted route No. | From                     | To                 |
|------------------|--------------------------|--------------------|
| US 6.            | I-80 (Dexter)            | I-80 (Altoona).    |
| US 6.            | IA 14                    | I-80 (Cedar Co.).  |
| US 6.            | Jct. IA 130              | Jct. I-74.         |
| IA 7             | Jct. IA 3                | North Jct. US 71.  |
| IA 7             | Barnum Road              | US 20.             |
| IA 8             | US 63                    | US 218.            |
| IA 9             | IA 60                    | North Jct. US 69.  |
| IA 9             | South Jct. US 69         | IA 26.             |
| IA 10            | East Jct. US 59          | ECL Sutherland.    |
| IA 12            | US 20                    | NCL Sioux City.    |
| IA 13            | US 30                    | US 52.             |
| IA 14            | IA 92 and IA 5           | NCL Newton.        |
| IA 14            | US 30                    | West Jct. IA 175.  |
| IA 14            | East Jct. IA 175         | IA 57.             |
| IA 15            | East Jct. US 18          | West Jct. IA 9.    |
| IA 16            | NCL Eldon                | North Jct. IA 1.   |
| IA 16            | Denmark                  | US 61.             |
| IA 17            | IA 141                   | East Jct. US 20.   |
| IA 17            | West Jct. US 20          | East Jct. IA 3.    |
| US 18            | WCL Rock Valley          | North Jct. US 71.  |
| US 18            | South Jct. US 71         | North Jct. US 218. |
| US 18            | South Jct. US 218        | North Jct. US 63.  |
| US 18            | South Jct. US 63         | Wisconsin.         |
| US 20            | I-29                     | Illinois.          |
| IA 21            | SCL What Cheer           | West Jct. US 6.    |
| IA 21            | East Jct. US 6           | East Jct. IA 8.    |
| IA 21            | West Jct. IA 8           | IA 412.            |
| IA 22            | WCL Wellman              | West Jct. IA 70.   |
| IA 23            | Jct. US 63               | Jct. IA 137.       |
| IA 25            | IA 2                     | IA 92.             |
| IA 25            | West Jct. IA 925         | IA 44.             |
| IA 26            | IA 9                     | New Albin.         |
| IA 28            | IA 92                    | East Jct. IA 5.    |
| IA 28            | West Jct. IA 5           | US 6.              |
| US 30            | Missouri River Bridge    | Illinois.          |
| IA 31            | SCL Correctionville      | US 59              |
| US 34            | Missouri River Bridge    | South Jct. IA 25.  |
| US 34            | North Jct. IA 25         | Illinois.          |
| IA 37            | WCL Earlring             | US 59.             |
| IA 38            | US 61                    | I-80.              |
| IA 38            | SCL Tipton               | East Jct. US 30.   |
| IA 39            | US 59                    | Deloit.            |
| IA 40            | Begin Route              | IA 2.              |
| IA 44            | US 71                    | IA 141.            |
| IA 46            | IA 5                     | IA 163.            |
| IA 48            | US 59                    | NCL Essex.         |
| IA 48            | US 34                    | US 6.              |
| IA 49            | SCL Lenox                | US 34.             |
| IA 51            | US 18                    | IA 9.              |
| US 52            | North Jct. US 61         | North Jct. IA 366. |
| US 52            | West Jct. IA 3           | East Jct. US 18.   |
| US 52            | ECL Calmar               | Burr Oak.          |
| IA 55            | Begin Route              | IA 2.              |
| IA 57            | IA 14                    | US 20.             |
| US 59            | IA 2                     | IA 184.            |
| US 59            | IA 92                    | North Jct. US 6.   |
| US 59            | IA 83                    | South Jct. US 30.  |
| US 59            | West Jct. US 20          | IA 3.              |
| IA 60            | East Jct. IA 10          | East Jct. US 18.   |
| US 61            | US 75                    | Minnesota.         |
|                  | Des Moines River Bridge. | South Jct. IA 2.   |
| US 61            | East Jct. IA 2           | Wisconsin.         |
| IA 62            | US 61                    | US 52.             |
| US 63            | Missouri                 | West Jct. IA 2.    |

# APPENDIX A—THE NATIONAL NETWORK— Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No. | From              | To                           |
|------------------|-------------------|------------------------------|
| US 63            | East Jct. IA 2    | East Jct. US 34.             |
| US 63            | West Jct. US 34   | IA 146.                      |
| US 63            | I-80              | East Jct. US 6.              |
| US 63            | West Jct. US 6    | NCL Chester.                 |
| IA 64            | US 151            | US 61.                       |
| US 65            | North Jct. US 34  | West Jct. US 6.              |
| US 65            | I-80              | IA 117.                      |
| US 65            | US 30             | South Jct. US 20             |
| US 65            | North Jct. US 20  | Sheffield.                   |
| US 65            | SCL Mason City    | IA 105.                      |
| US 67            | Mississippi River | South Jct. US 30.            |
| US 67            | East Jct. US 30   | 4.64 miles North of Clinton. |
| US 69            | SCL Lamoni        | I-35.                        |
| US 69            | North Jct. US 65  | IA 105.                      |
| IA 70            | Begin Route       | West Jct. IA 22.             |
| US 71            | Missouri          | East Jct. IA 2.              |
| US 71            | East Jct. IA 2    | IA 198.                      |
| US 71            | North Jct. US 20  | West Jct. IA 9.              |
| US 71            | East Jct. IA 9    | Minnesota.                   |
| US 75            | North Jct. I-29   | E. Junction IA 9.            |
| US 77            | Nebraska          | I-29.                        |
| IA 77            | IA 92             | Keota.                       |
| IA 78            | IA 149            | North Jct. US 218.           |
| IA 78            | South Jct. US 218 | IA 249.                      |
| IA 78            | WCL Morning Sun   | US 61.                       |
| IA 83            | US 59             | West Jct. US 6.              |
| IA 85            | US 63             | IA 21.                       |
| IA 86            | US 71             | IA 9.                        |
| IA 92            | Nebraska          | IA 48.                       |
| IA 92            | WCL Fontanelle    | West Jct. IA 5.              |
| IA 92            | East Jct. IA 5    | North Jct. IA 1.             |
| IA 92            | South Jct. IA 1   | Cotter.                      |
| IA 93            | WCL Sumner        | IA 150.                      |
| IA 94            | Palo              | I-380.                       |
| IA 95            | Carbon            | IA 148.                      |
| IA 96            | Gladbrook         | US 63.                       |
| IA 99            | Toolesboro        | Wapello.                     |
| IA 101           | US 218            | IA 150.                      |
| IA 103           | US 218            | US 61.                       |
| IA 105           | US 69             | 218.                         |
| IA 107           | SCL Thornton      | US 18.                       |
| IA 110           | US 20             | IA 7.                        |
| IA 111           | US 18             | Woden.                       |
| IA 117           | IA 163            | US 65.                       |
| IA 127           | South Jct. IA 183 | US 30.                       |
| IA 130           | US 67             | I-80.                        |
| IA 133           | US 30             | Nevada.                      |
| US 136           | East Jct. US 61   | Mississippi River Bridge.    |
| IA 136           | ECL Delmar        | WCL Lost Nation.             |
| IA 136           | SCL Worthington   | IA 3.                        |
| IA 137           | IA 5              | IA 23.                       |
| IA 141           | I-29              | North Jct. US 30.            |
| IA 141           | WCL Manning       | West Jct. US 71.             |
| IA 141           | East Jct. US 71   | West Jct. IA 161.            |
| IA 141           | IA 141            | US 169.                      |
| IA 141           | IA 210            | I-35.                        |
| IA 144           | IA 141            | NCL Dana                     |
| IA 145           | I-35              | ECL Thurman.                 |
| IA 146           | US 63             | Dunbar.                      |
| IA 148           | West Jct. IA 2    | US 34.                       |
| IA 148           | IA 95             | I-80.                        |
| IA 149           | US 63             | IA 78.                       |
| IA 149           | SCL Williamsburg  | West Jct. US 6.              |

# APPENDIX A—THE NATIONAL NETWORK— Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No. | From               | To                 |
|------------------|--------------------|--------------------|
| IA 149           | East Jct. US 6     | US 30.             |
| IA 150           | IA 151             | IA 283.            |
| IA 150           | North Jct. US 20   | South Jct. IA 3.   |
| IA 150           | North Jct. IA 3    | US 18.             |
| US 151           | US 30              | South Jct. US 6    |
| IA 157           | US 63              | Lime Springs.      |
| IA 160           | IA 415             | I-35.              |
| IA 161           | West Jct. IA 141   | SCL Dedham.        |
| IA 163           | US 65              | IA 92.             |
| US 169           | SCL Arispe         | West Jct. US 3.    |
| US 169           | East Jct. US 34    | South Jct. IA 11.  |
| US 169           | SCL DeSoto         | I-80.              |
| US 169           | US 6               | IA 141.            |
| US 169           | West Jct. US 30    | IA 3.              |
| US 169           | US 18              | West Jct. IA 8.    |
| IA 173           | IA 83              | I-80.              |
| IA 175           | Nebraska           | ECL Onawa.         |
| IA 175           | South Jct. US 71   | ECL Lake City.     |
| IA 175           | Gowrie             | West Jct. US 170.  |
| IA 175           | East Jct. US 169   | ECL Dayton.        |
| IA 175           | WCL Stratford      | South Jct. IA 170. |
| IA 175           | North Jct. IA 17   | South Jct. US 170. |
| IA 175           | North Jct. US 69   | ECL Radcliffe.     |
| IA 175           | North Jct. US 65   | US 63.             |
| IA 181           | Dallas             | IA 5.              |
| IA 183           | North Jct. IA 127  | NCL Plegash.       |
| IA 184           | WCL Randolph       | US 59.             |
| IA 188           | SCL Clarksville    | US 63.             |
| IA 191           | NCL Council Bluffs | NCL Neola.         |
| IA 192           | I-29               | East Jct. US 170.  |
| IA 192           | West Jct. US 6     | I-29.              |
| IA 196           | US 71              | US 20.             |
| IA 205           | US 65              | Milo.              |
| IA 210           | IA 141             | NCL Woodland.      |
| IA 210           | North Jct. IA 17   | ECL Slater.        |
| IA 214           | IA 175             | Wellsburg.         |
| IA 215           | Union              | IA 175.            |
| US 218           | US 136             | South Jct. US 170. |
| US 218           | North Jct. US 61   | IA 92.             |
| US 218           | Relocation IA 22   | I-380.             |
| US 218           | I-80               | East Jct. US 170.  |
| US 218           | East Jct. US 30    | IA 227.            |
| IA 220           | US 6               | IA 149.            |
| IA 221           | I-35               | Roland.            |
| IA 227           | US 218             | Stacyville.        |
| IA 236           | IA 141             | Templeton.         |
| IA 244           | I-80               | IA 191.            |
| IA 249           | IA 78              | Winfield.          |
| IA 272           | Elma               | US 63.             |
| IA273            | WCL Drakeville     | US 63.             |
| IA276            | US 71              | IA 327.            |
| IA279            | US 30              | Atkins.            |
| IA281            | WCL Fairbank       | IA 150.            |
| IA283            | Brandon            | IA 150.            |
| IA287            | US 30              | Newhall.           |
| IA299            | New Providence     | IA 175.            |
| IA300            | Modale             | I-29.              |
| IA301            | I-29               | Little Sioux.      |
| IA316            | IA 5               | NCL Runnels.       |
| IA325            | Spillville         | US 52.             |
| IA330            | US 65              | US 30.             |
| IA363            | IA 101             | Urbana.            |
| IA383            | US 69              | Randal.            |
| IA386            | South Jct. US 52   | North Jct. US 52.  |
| IA401            | US 6               | Johnston.          |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

the National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| aid route No. | From                  | To               |
|---------------|-----------------------|------------------|
| 4             | US 61 .....           | Montrose.        |
| 6             | Lone Tree .....       | IA 22.           |
| 8             | US 34 .....           | US 61.           |
| 5             | US 6 .....            | NCL Polk City.   |
| 7             | IA 38 .....           | I-280.           |
| 1             | West Jct. US 20 ..... | East Jct. US 20. |
| 1             | US 30 .....           | Ames.            |
| 1             | IA 150 .....          | IA 187.          |
| 1             | IA 5 .....            | IA 975.          |
| 1             | US 20 .....           | Farley.          |
| 1             | Monona Co. ....       | US 75.           |
| 1             | IA 5 .....            | IA 984.          |

## Kansas

Kansas State statute, all Federal-aid Primary Routes available to commercial vehicles with the dimensions prescribed by the Surface Transportation Assistance Act of 1956. In addition Kansas has made available all other U.S. State numbered routes.

## Kentucky

|   |                                                                  |                                       |
|---|------------------------------------------------------------------|---------------------------------------|
| 1 | Tennessee St. Line W. of Fulton.                                 | US 45 Bypass.                         |
| 1 | Jackson Purchase Pkwy W. of Mayfield.                            | Jackson Purchase Pkwy N. of Mayfield. |
| 1 | US 45 Bypass .....                                               | I-24 in Marshall County.              |
| 1 | I-24 S. of Eddyville.....                                        | US 31W in Hardin County.              |
| 1 | I-65 .....                                                       | US 60 near Versailles.                |
| 1 | I-65 .....                                                       | US 60 Bypass in Owensboro.            |
| 1 | I-64 E. of Winchester..                                          | Ky 15 N. of Campion.                  |
| 1 | Entire Circle of Lexington.                                      |                                       |
| 1 | US 41A S. City limits of Hopkinsville.                           | US 41 S. of Nortonville.              |
| 1 | Pennyrile Pkwy near Western Kentucky, Pkwy.                      | Pennyrile Pkwy at Madisonville.       |
| 1 | US 41 near N. City limits of Madisonville.                       | US 41 in Henderson.                   |
| 1 | Pennyrile Pkwy .....                                             |                                       |
| 1 | Pennyrile Pkwy in Henderson.                                     | Indiana St. Line.                     |
| 1 | I-65 at Warren County Line.                                      | US 60 Bypass in Owensboro.            |
| 1 | US 27 .....                                                      | US 27 W. of Somerset.                 |
| 1 |                                                                  | I-471.                                |
| 1 | Taylorville Rd. (KY 155).                                        | US 42.                                |
| 1 | New Construction 4.21 miles E. of Bracken County line (MP 4.21). | US 62-68 at Maysville (MP 10.12).     |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No. | From                                 | To                                                          |
|------------------|--------------------------------------|-------------------------------------------------------------|
| KY 11.....       | KY 3170 at Lewisburg.                | US 62 and US 68 in Maysville.                               |
| KY 15.....       | Mountain Pkwy at Campion.            | US 119 in Whitesburg.                                       |
| KY 18.....       | KY 338 at Burlington...              | US 25 in Florence.                                          |
| KY 21.....       | I-75 near Berea .....                | US 25 in Berea (US 25 S.).                                  |
| US 23 .....      | Ohio St. Line .....                  | US 119 N. of Pikeville.                                     |
| US 23 .....      | US 119 near Jenkins.                 | Virginia St. Line.                                          |
| US 23 Spur ..... | Ohio River Bridge at Ashland.        |                                                             |
| US 25 .....      | US 421 S. of Richmond.               | KY 876 in Richmond.                                         |
| US 25 .....      | KY 418 .....                         | Nandino Blvd., in Lexington (via KY 4).                     |
| US 25 .....      | US 42 in Florence .....              | Ohio St. Line.                                              |
| US 25E .....     | Virginia St. Line .....              | I-75 N. of Corbin.                                          |
| US 27 .....      | Tennessee St. Line .....             | Ohio St. Line (via KY 4 in Lexington).                      |
| US 31W.....      | Tennessee St. Line .....             | KY 255 at Park City (via US 31W. Bypass in Bowling Green).  |
| US 31W.....      | US 31 W. Bypass in Elizabethtown.    | I-264.                                                      |
| US 31W .....     | Western Kentucky Pkwy.               | US 31W in Elizabethtown.                                    |
| KY 32 .....      | I-84 .....                           | US 60 at Morehead.                                          |
| KY 35 .....      | US 127 at Bromley .....              | I-71.                                                       |
| KY 36 .....      | I-84 .....                           | US 60 at Owingsville.                                       |
| KY 38 .....      | US 42 in Carrollton .....            | KY 227.                                                     |
| US 41 .....      | US 68 (Main Street) Hopkinsville.    | US 68 (McLean Ave.) Hopkinsville.                           |
| US 41A.....      | Tennessee St. Line .....             | Pennyrile Pkwy S. City Limits Hopkinsville.                 |
| US 41A.....      | KY 112 in Earlinton...               | KY 281 and KY 1751 Madisonville.                            |
| US 42 .....      | I-264.....                           | Oldham County Line.                                         |
| US 42 .....      | KY 55 at Carrollton.....             | KY 47 at Ghent.                                             |
| US 45 .....      | US 45 Bypass N. of Mayfield.         | US 62 in Paducah.                                           |
| KY 52.....       | KY 876 in Richmond...                | KY 499 at Irvine.                                           |
| KY 55.....       | Cumberland Pkwy in Columbia.         | US 150 at Springfield.                                      |
| US 60 .....      | US 60 Bypass W. of Owensboro.        | KY 68 Hawesville.                                           |
| US 60 .....      | I-264 .....                          | KY 1531 at Eastwood.                                        |
| US 60 .....      | US 421 at Frankfort.....             | I-75 near Lexington (via Versailles and KY 4 in Lexington). |
| US 60 .....      | Junction of KY 180 near Cannonsburg. | US 23 in Ashland.                                           |
| US 60 .....      | KY 144 in Meade County.              | US 31W at Ft. Knox.                                         |
| US 60 .....      | US 60 W. of Owensboro.               | US 60 E. of Owensboro.                                      |
| US 60 .....      | Tennessee St. Line .....             | KY 80 at Burkesville.                                       |
| US 62 .....      | I-24 at Paducah.....                 | Western Kentucky Pkwy.                                      |
| US 62 .....      | KY 245 at Bardstown...               | US 150 at Bardstown.                                        |

### APPENDIX A—THE NATIONAL NETWORK— Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No.    | From                                              | To                                                         |
|---------------------|---------------------------------------------------|------------------------------------------------------------|
| US 62 .....         | KY 353 .....                                      | US 27 at Cynthiana.                                        |
| US 68 .....         | I-24 in Trigg County .....                        | Green River Pkwy at Bowling Green.                         |
| US 68 .....         | US 27 at Paris .....                              | Ohio St. Line at Maysville (via Paris Bypass).             |
| KY 68 .....         | US 60 at Hawesville .....                         | Indiana St. Line.                                          |
| KY 79 .....         | KY 1051 in Brandenburg .....                      | Indiana St. Line.                                          |
| KY 80 .....         | US 27 at Somerset .....                           | US 25 N. of London.                                        |
| KY 80 .....         | KY 15 at Hazard .....                             | US 23 at Allen.                                            |
| KY 90 .....         | I-65 .....                                        | Cumberland Pkwy at Glasgow.                                |
| KY 90 .....         | KY 61 at Burkesville .....                        | US 27 at Burnside.                                         |
| KY 114 .....        | US 460 E. of Salyersville .....                   | US 23-460 at Prestonsburg.                                 |
| KY 118 .....        | Daniel Boone Pkwy .....                           | US 421 and KY 80 NW of Hyden.                              |
| US 119 .....        | KY 15 at Whitesburg .....                         | US 23 at Jenkins.                                          |
| US 119 .....        | US 25E. S. of Pineville .....                     | US 421 at Harlan.                                          |
| US 119 .....        | US 23 at Pikeville .....                          | KY 1441.                                                   |
| US 127 .....        | Tennessee St. Line .....                          | US 60 in Frankfort (via Danville & Lawrenceburg Bypasses). |
| US 127 .....        | US 460 in Frankfort .....                         | I-71.                                                      |
| US 127 Bypass ..... | US 127 S. of Danville .....                       | US 127 N. of Danville.                                     |
| US 127 Bypass ..... | US 127 S. of Lawrenceburg .....                   | US 127 N. of Lawrenceburg.                                 |
| KY 144 .....        | KY 446 .....                                      | US 60.                                                     |
| US 150 .....        | US 31E at Bardstown .....                         | US 27 N. City Limits of Stanford (via Danville Bypass).    |
| US 79 .....         | Tennessee St. Line .....                          | US 66 Russellville.                                        |
| KY 151 .....        | US 127 near Lawrenceburg .....                    | I-64 near Graefenburg.                                     |
| KY 180 .....        | I-64 interchange near Cannonsburg (MP 0.63) ..... | Junction US 60 and KY 180 at Cannonsburg.                  |
| KY 192 .....        | I-75 S. of London .....                           | Daniel Boone Pkwy E. of London.                            |
| KY 206 .....        | Mountain Pkwy at Helecheva .....                  | US 460 W. of Index.                                        |
| KY 212 .....        | KY 20 .....                                       | Greater Cincinnati Airport.                                |
| KY 227 .....        | KY 355 near Worthville .....                      | KY 36 at Carrollton.                                       |
| US 231 .....        | US 80 Bypass in Owensboro .....                   | Indiana St. Line.                                          |
| US 231 .....        | I-65 .....                                        | US 31W Bypass at Bowling Green.                            |
| KY 236 .....        | KY 212 .....                                      | US 25 at Erlanger.                                         |
| KY 237 .....        | KY 18 .....                                       | I-275 Boone County.                                        |
| KY 245 .....        | I-65 .....                                        | US 62 at Bardstown.                                        |
| KY 255 .....        | US 31W at Park City .....                         | I-65.                                                      |
| KY 259 .....        | Western Kentucky Pkwy .....                       | US 62 in Leitchfield.                                      |
| KY 261 .....        | US 41A .....                                      | US 41 in Madisonville.                                     |
| KY 341 .....        | US 421 near Midway .....                          | I-64 near Midway.                                          |
| KY 348 .....        | Jackson Purchase Pkwy W. of Benton .....          | US 641 in Benton.                                          |

### APPENDIX A—THE NATIONAL NETWORK— Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No.              | From                                  | To                                                                   |
|-------------------------------|---------------------------------------|----------------------------------------------------------------------|
| KY 416 .....                  | US 25 S. of Lexington .....           | I-75 S. of Lexington.                                                |
| US 421 .....                  | US 119 .....                          | 0.1 mile S. of H. Appalachian Regional Hwy 2nd Street in Manchester. |
| US 421 & KY 80 .....          | Daniel Boone Pkwy .....               | KY 341 near M. Broadway at re bridge.                                |
| US 421 .....                  | KY 4 in Lexington .....               | US 60 (4th St) Owensboro.                                            |
| US 421 .....                  | US 460 in Frankfort .....             | I-65.                                                                |
| US 431 .....                  | US 80 Bypass in Owensboro .....       | KY 144.                                                              |
| KY 446 .....                  | US 31W NW of Bowling Green .....      | KY 686 N. of Sterling.                                               |
| KY 446 .....                  | KY 1051 at Brandenburg .....          | US 23 near Paintsville.                                              |
| US 460 .....                  | I-64 .....                            | Bluegrass Pkwy KY 348 in Bat US 60.                                  |
| US 460 .....                  | Mountain Pkwy Extension .....         | US 460 N. of Sterling.                                               |
| KY 555 .....                  | US 150 at Springfield .....           | KY 52 E. of Richmond.                                                |
| US 641 .....                  | Tennessee St. Line .....              | I-64 and I-75 KY 79.                                                 |
| KY 676 .....                  | US 127 in Frankfort .....             | Pennyrile Pkwy City Limits of Hopkinsville.                          |
| KY 686 .....                  | KY 11 S. of Mt. Sterling .....        | I-64 at Wind                                                         |
| KY 876 .....                  | I-75 at Richmond .....                | KY 9.                                                                |
| KY 922 .....                  | KY 4 in Lexington .....               | KY 15 N. of H                                                        |
| KY 1051 .....                 | KY 446 S. of Brandenburg .....        | US 460 at Salyersville.                                              |
| KY 1682 .....                 | US 66 W. of Hopkinsville .....        | Lexington-Blueg Depot.                                               |
| KY 1958 .....                 | KY 627 S. of Winchester .....         |                                                                      |
| KY 1998 .....                 | US 27 at Cold Springs .....           |                                                                      |
| Daniel Boone Pkwy .....       | US 25 N. of London .....              |                                                                      |
| Mountain Pkwy Extension ..... | End of Mountain Pkwy at Campton ..... |                                                                      |
| KY 859/KY 57 .....            | I-64 .....                            |                                                                      |

#### Louisiana

Under Louisiana State statute, all Federal-aid Primary Routes are available to commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act of 1982. In addition Louisiana has made available the following routes:

|             |                                  |                       |
|-------------|----------------------------------|-----------------------|
| La 1 .....  | US 190 West of Baton Rouge ..... | Southwest of Morganza |
| La 10 ..... | I-49 at Beggs .....              | US 71 at LaBea        |
| La 20 ..... | US 90 at Gibson .....            | La 24 near Thibodeaux |
| La 30 ..... | La 42 in Baton Rouge .....       | La 73 in Baton Rouge  |
| La 46 ..... | La 39 in New Orleans .....       | La 47 in Chalmette    |
| La 47 ..... | La 46 in Chalmette .....         | La 39 in Chalmette    |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| State route No.         | From                       | To |
|-------------------------|----------------------------|----|
| US 90 near New Orleans. | Williams Blvd. in Kenner.  |    |
| La 408 in Baton Rouge.  | Baker.                     |    |
| La 72 in Bossier City.  | I-20 in Minden.            |    |
| US 90 near Baldwin.     | La 182 in Baldwin.         |    |
| La 20 at Gibson.        | La 3052 near Raceland.     |    |
| La 27 in Sulphur.       | I-10 in Maplewood.         |    |
| I-20 near Rayville.     | US 80 in Rayville.         |    |
| US 61 in Baton Rouge.   | La 1032 in Denham Springs. |    |
| I-55 in Hammond.        | La 443 in Hammond.         |    |
| US 61 in Baton Rouge.   | La 67 in Baton Rouge.      |    |
| I-10 in Slidell.        | US 11 in Slidell.          |    |
| La 3132 in Shreveport.  | I-20 in Shreveport.        |    |
| La 39 in New Orleans.   | US 90 in New Orleans.      |    |
| La 1 in Shreveport.     | US 71 in Bossier City.     |    |
| The Houma Tunnel.       | La 24 in Houma.            |    |
| La 427 in Baton Rouge.  | La 73 in Baton Rouge.      |    |
| US 71 in Bossier City.  | US 80 in Bossier City.     |    |
| US 90 near Franklin.    | La 182 near Franklin.      |    |

Maine

|                       |                                           |
|-----------------------|-------------------------------------------|
| I-295 South Portland. | US 1 Scarborough.                         |
| I-95 South Portland.  | US 1 South Portland.                      |
| I-95 Portland.        | I-95 near Gardiner.                       |
| I-95 Yarmouth.        | I-95 Freeport.                            |
| I-95 Brunswick.       | Old US 1 (vicinity of Congress St.) Bath. |

Maryland

|                                 |                            |
|---------------------------------|----------------------------|
| US 50/301 Bowie.                | I-695 near Glen Burnie.    |
| US 301 at Upper Marlboro.       | I-95 Forestville.          |
| MD 648 in Glen Burnie.          | MD 695 Glen Burnie.        |
| MD 607 at Jacobsville.          | MD 3.                      |
| D.C. Line.                      | US 50 Cheverly.            |
| I-695 Linthicum.                | I-95 in Baltimore.         |
| I-695 at MD 3 near Glen Burnie. | I-95 at I-95 near Kenwood. |
| MD 695 E. of Baltimore.         | Old Eastern Avenue.        |
| Virginia St. Line.              | Delaware St. Line.         |
| US 340 in Frederick.            | MD 26 N. of Frederick.     |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No. | From                           | To                        |
|------------------|--------------------------------|---------------------------|
| US 40.           | MD 639 at Cumberland.          | I-70 at Hancock.          |
| US 40.           | US 340 in Frederick.           | I-70 in Frederick.        |
| US 48.           | West Virginia St. Line.        | MD 639 at Cumberland.     |
| US 50.           | MD 201 Kenilworth Ave., Chevy. | US 13 (bypass) Salisbury. |
| US 301.          | Virginia St. Line.             | Delaware St. Line.        |
| US 340.          | MD 67 at Weaverton.            | US 40 at Frederick.       |

NOTE: Width and Tandem Trailer restrictions may be enforced on I-895 Harbor Tunnel Thruway. Alternate routing is available via MD 695 and the Francis Scott Key Bridge. For specific information, contact the Harbor Tunnel Thruway, Post Office Box 3432, Baltimore, MD 21225, telephone (301) 355-3500.

Massachusetts

|         |                    |                         |
|---------|--------------------|-------------------------|
| MA 2.   | I-190 Leominster.  | I-495 Littleton.        |
| US 3.   | I-95 Burlington.   | New Hampshire St. Line. |
| MA 24.  | I-195 Fall River.  | I-93 Randolph.          |
| MA 140. | I-195 New Bedford. | MA 24 Taunton.          |

NOTE: I-395 (MA 52) was approved as part of the interstate system on April 18, 1983.

Through traffic may be routed via I-495 around Boston and via I-91 around Holyoke.

For traffic destined within the Boston and Holyoke areas restrictions will apply for the following routes: I-95 (MA 128) from I-93 Canton to US 1, South Lynnfield; I-93 from I-95 Canton to I-95 Reading; I-391 from I-91 Chicopee to High and Maple Streets in Holyoke; and US 1 from I-95 S. Lynnfield to I-95 West Peabody.

For specific information contact this address: Chief Engineer, Massachusetts Department of Public Works, 10 Park Plaza, Room 3140, Boston, Massachusetts 02116, Telephone (617) 973-7830.

Michigan

|          |                                    |                                    |
|----------|------------------------------------|------------------------------------|
| MI 1.    | US 10BR & I-75BL: Pontiac.         | Adams Street, Detroit.             |
| US 2.    | Wisconsin St. Line, Ironwood.      | Wisconsin St. Line, Crystal Falls. |
| US 2.    | Wisconsin St. Line, Iron Mountain. | International Boundary.            |
| MI 3.    | Clark Street, I-75 in Detroit.     | MI-29 & I-94.                      |
| MI 4.    | US 24.                             | Orchard Lake Road.                 |
| MI 5.    | MI 102 Oakland-Wayne County Line.  | I-96 at Schaffer Road.             |
| US 8.    | US 2, Iron Mountain.               | Wisconsin St. Line.                |
| US 10.   | Ludington.                         | Jct I-375, Detroit.                |
| US 10BR. | South Jct. US 10, Pontiac.         | MI 1, Pontiac.                     |
| US 12.   | Indiana St. Line.                  | Jefferson Ave, Detroit.            |
| MI 13.   | I-69, Lennon.                      | US 23, Standish.                   |
| MI 14.   | I-94.                              | I-275.                             |
| MI 15.   | US 10, Clarkston.                  | MI 25, Bay City.                   |
| MI 18.   | US 10.                             | MI 61, Gladwin.                    |
| MI 20.   | US 31 New Era.                     | MI 37, White Cloud.                |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No. | From                                | To                            |
|------------------|-------------------------------------|-------------------------------|
| MI 20 .....      | US 27, Mt. Pleasant                 | US 10, Midland.               |
| MI 21 .....      | I-96 near Grand Rapids.             | MI 25, Port Huron.            |
| US 23 .....      | Ohio St. Line                       | Mackinaw Bridge.              |
| MI 24 .....      | I-75 Connector near Lake Orion.     | MI 21, Lapeer.                |
| MI 24 .....      | MI 48                               | MI 81, Caro.                  |
| US 24 .....      | Ohio St. Line                       | US 10BR, Pontiac.             |
| MI 26 .....      | US 45                               | MI 36.                        |
| MI 27 .....      | I-75                                | US 23, Cheboygan.             |
| US 27 .....      | Indiana St. Line                    | I-75, N. Higgins Lake.        |
| MI 26 .....      | US 2, Wakefield                     | I-75.                         |
| US 31 .....      | Indiana St. Line                    | S. Approach Mackinac Bridge.  |
| MI 32 .....      | Hillman                             | Alpena.                       |
| MI 33 .....      | Mio                                 | Fairview.                     |
| US 33 .....      | Indiana St. Line                    | I-196.                        |
| MI 35 .....      | US 2 & US 41, Escanaba.             | US 2 US & 41, Gladstone.      |
| MI 36 .....      | US 127, Mason                       | Danville.                     |
| MI 37 .....      | MI 55                               | US 31 & MI 72, Traverse City. |
| MI 37 .....      | I-96, Grand Rapids                  | MI 46, Kent City.             |
| MI 38 .....      | US 45                               | US 41, Baraga.                |
| MI 39 .....      | Lafayette St/Lincoln Park, Detroit. | US 10.                        |
| MI 40 .....      | Allegan                             | US 31BR & I-196BL, Holland.   |
| US 41 .....      | Wisconsin St. Line                  | Houghton.                     |
| MI 43 .....      | MI 37, Hastings                     | US 127, Lansing.              |
| US 45 .....      | Wisconsin St. Line                  | Rockland.                     |
| MI 46 .....      | Cedar Springs                       | Port Sanilac.                 |
| MI 47 .....      | MI 46                               | US 10.                        |
| MI 50 .....      | MI 43 & MI 66, Woodbury.            | Eaton Rapids.                 |
| MI 50 .....      | N. Jct. US 127                      | I-94.                         |
| MI 50 .....      | S. Jct. US 127                      | I-75.                         |
| MI 51 .....      | Niles                               | I-94.                         |
| MI 52 .....      | Ohio St. Line                       | US 12.                        |
| MI 52 .....      | I-96                                | MI 46.                        |
| MI 53 .....      | MI 3, Detroit                       | MI 25, Port Austin.           |
| MI 55 .....      | US 31, Marquette                    | US 131, Cadillac.             |
| MI 55 .....      | US 131, Cadillac                    | I-75.                         |
| MI 55 .....      | MI 65                               | Tawas City.                   |
| MI 56 .....      | MI 13 & MI 21                       | MI 54BR.                      |
| MI 57 .....      | US 131                              | US 27.                        |
| MI 57 .....      | MI 52                               | I-75.                         |
| MI 59 .....      | US 10BR, Pontiac                    | I-94.                         |
| MI 60 .....      | MI 62, Cassopolis                   | I-69 & US 27.                 |
| MI 61 .....      | MI 115                              | US 27, Harrison.              |
| MI 61 .....      | MI 18, Gladwin                      | US 23, Standish.              |
| MI 62 .....      | Indiana St. Line                    | US 12.                        |
| MI 64 .....      | US 2, Marquette                     | US 2.                         |
| MI 64 .....      | MI 28, Marquette                    | MI 28, Bergland.              |
| MI 65 .....      | US 23, Omer                         | MI 55.                        |
| MI 65 .....      | MI 72                               | MI 32.                        |
| MI 65 .....      | Posen                               | US 23, North of Posen.        |
| MI 66 .....      | Indiana St. Line                    | US 12.                        |
| MI 66 .....      | Battle Creek                        | MI 78.                        |
| MI 66 .....      | MI 43                               | MI 46.                        |
| MI 66 .....      | US 131, Mancelon                    | US 131, Kalkaska.             |
| MI 67 .....      | US 41, Trenary                      | MI 94, Chatham.               |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No. | From                                       | To              |
|------------------|--------------------------------------------|-----------------|
| MI 68 .....      | US 31 & US 131, Petoskey.                  | US 23, Rogers   |
| MI 69 .....      | US 2 & US 141, Crystal Falls.              | MI 95, Sagola.  |
| MI 72 .....      | US 31, Acme                                | I-75, Grayling. |
| MI 72 .....      | I-75                                       | US 23, Harnett  |
| MI 77 .....      | US 2                                       | MI 28.          |
| MI 78 .....      | MI 68                                      | I-69.           |
| MI 81 .....      | MI 24, Caro                                | MI 53.          |
| MI 82 .....      | MI 37                                      | US 131.         |
| MI 83 .....      | Frankenmuth                                | I-75.           |
| MI 84 .....      | I-75                                       | MI 25.          |
| MI 85 .....      | I-75, Woodhaven                            | I-75, Detroit   |
| MI 89 .....      | Allegan                                    | US 131.         |
| MI 90 .....      | MI 53                                      | MI 53, Burnside |
| MI 94 .....      | US 41                                      | MI 28.          |
| MI 95 .....      | US 2                                       | US 41 & MI 28   |
| MI 97 .....      | MI 102                                     | MI 59.          |
| MI 102 .....     | I-96 & I-695                               | I-94.           |
| MI 103 .....     | Indiana St. Line                           | US 12.          |
| MI 104 .....     | US 31                                      | I-66.           |
| MI 115 .....     | US 27                                      | MI 22.          |
| MI 117 .....     | US 2                                       | MI 28.          |
| MI 123 .....     | I-75                                       | MI 28.          |
| US 127 .....     | Ohio St. Line                              | US 27.          |
| US 131 .....     | Indiana St. Line                           | US 31, Petoskey |
| US 141 .....     | Wisconsin St. Line South of Crystal Falls. | US 41, & MI 28  |
| MI 142 .....     | MI 25 near Bayport                         | MI 53.          |
| MI 205 .....     | Indiana St. Line                           | US 12.          |
| US 223 .....     | US 23                                      | US 12.          |
| I-75 Conn. ....  | US 10BR, Pontiac                           | I-75.           |

## Minnesota

|             |                                                   |                        |
|-------------|---------------------------------------------------|------------------------|
| MN 1 .....  | No. Oak St. Line                                  | MN 32 at Thief Falls.  |
| US 2 .....  | North Dakota St. Line, E. Grand Forks.            | I-35 at Duluth.        |
| MN 3 .....  | MN 110 at Inver Grove Heights.                    | I-94 at St. Paul.      |
| MN 5 .....  | MN 22 at Gaylord                                  | W. Jct. TH 212         |
| MN 5 .....  | I-35E in St. Paul                                 | Kellogg Blvd. n Paul.  |
| MN 5 .....  | I-494 at Bloomington                              | I-35E at St. Paul      |
| MN 7 .....  | US 75 near Odessa                                 | US 59 at Montevideo    |
| MN 7 .....  | US 59 at Montevideo                               | MN 100 at St. L. Park. |
| MN 9 .....  | US 12 at Benson                                   | US 59 at Moma          |
| US 10 ..... | Clay County State Aid Highway 11, E. of Moorhead. | I-694 at Arden         |
| MN 11 ..... | MN 32 at Greenbush                                | MN 72 at Baud          |
| US 12 ..... | MN 59                                             | MN 29 at Benson        |
| US 12 ..... | MN 260 in St. Paul                                | I-94 in St. Paul       |
| US 12 ..... | MN 9 at Benson                                    | I-94 at Minneapolis    |
| US 12 ..... | I-694 at Woodbury                                 | Wisconsin St. L.       |
| MN 13 ..... | I-90                                              | MN 14 at Wase          |
| MN 13 ..... | MN 101 at Savage                                  | I-35W at Bernes        |
| US 14 ..... | US 75 at Lake Benton.                             | I-35 at Owatonna       |

APPENDIX A—THE NATIONAL NETWORK—  
ContinuedNational Network in the 50 States, the District of  
Columbia and Puerto Rico consists of the Interstate Sys-  
tem and the following highways]

| Post route<br>No. | From                                          | To                                 |
|-------------------|-----------------------------------------------|------------------------------------|
| 1                 | US 218 near<br>Owatonna.                      | I-35 at Owatonna.                  |
| 1                 | MIN 218 SE of<br>Owatonna.                    | MIN 57 in Kasson.                  |
| 1                 | MIN 57 in Kasson                              | N. Jct. MN 52 in<br>Rochester.     |
| 1                 | I-90 N. of Fairmont                           | S. Jct. MN 60.                     |
| 1                 | MIN 14 at New Ulm.                            | MIN 19 at Winthrop.                |
| 1                 | MIN 59 at Marshall.                           | MIN 22 at Gaylord.                 |
| 1                 | MIN 109 at Wells.                             | MIN 60 at Menkato.                 |
| 1                 | MIN 212 at Glencoe                            | MIN 7 at Hutchinson.               |
| 1                 | MIN 7 N.W. of<br>Hutchinson.                  | MIN 12 at Litchfield.              |
| 1                 | MIN 30 at Pipestone                           | Cottonwood.                        |
| 1                 | Cottonwood.                                   | MIN 71 at Wilmar.                  |
| 1                 | US 12 at Wilmar.                              | I-35 near Hinckley.                |
| 1                 | I-94 at Clearwater                            | MIN 10 at Clear Lake.              |
| 1                 | I-94 at Monticello                            | MIN 10 at Big Lake.                |
| 1                 | N. Jct. MN 29 at<br>Alexandria.               | MIN 127 at Osakis.                 |
| 1                 | US 71 at Long Prairie.                        | US 10 at Little Falls.             |
| 1                 | South Dakota St.<br>Line at Browns<br>Valley. | I-94 at Sauk Centre.               |
| 1                 | I-94 at Alexandria                            | N. Jct. MN 27 at<br>Alexandria.    |
| 1                 | MIN 75 at Pipestone                           | MIN 59 at Slayton.                 |
| 1                 | MIN 1 at Thief River<br>Falls.                | MIN 11 at Greenbush.               |
| 1                 | I-35 near Cloquet                             | US 53 at<br>Independence.          |
| 1                 | MIN 71 at Park<br>Rapids.                     | MIN 371 at Walker.                 |
| 1                 | I-35W at Roseville                            | MIN 95 at Oak Park<br>Heights.     |
| 1                 | US 212 near Chaska                            | US 169 near Chaska.                |
| 1                 | I-90 at Wilson                                | US 61 at Winona.                   |
| 1                 | MIN 65 in Mpls.                               | MIN 10 in Coon<br>Rapids.          |
| 1                 | MIN 5 at St. Paul.                            | I-694 at Arden Hills.              |
| 1                 | I-90S. of Rochester                           | MIN 63 at Rochester.               |
| 1                 | MIN 110 in Inver<br>Grove Heights.            | Pisto Blvd. (St. Paul).            |
| 1                 | Pisto Blvd.                                   | I-35E-St. Paul.                    |
| 1                 | US 63 at Rochester                            | MIN 110 at Inver<br>Grove Heights. |
| 1                 | I-35 at Duluth                                | S. Jct. US 169 at<br>Virginia.     |
| 1                 | MIN 28 at Glenwood                            | 7th St. N in<br>Minneapolis.       |
| 1                 | E. Jct. I-94 in<br>Minneapolis.               | MIN 3 at Inver Grove<br>Heights.   |
| 1                 | US 52 at Inver Grove<br>Heights.              | MIN 3 at St. Paul.                 |
| 1                 | I-90 at Worthington                           | MIN 30 at Slayton.                 |
| 1                 | I-94 at Fergus Falls                          | US 2 at Erskine.                   |
| 1                 | MIN 7 at Appleton                             | MIN 12 N. of<br>Holloway.          |
| 1                 | MIN 2 at Erskine                              | MIN 175 N. of Lake<br>Bronson.     |
| 1                 | Iowa St. Line at<br>Bigelow.                  | N. Jct. US 169 at<br>Menkato.      |
| 1                 | MIN 55 at Hastings                            | I-94 in St. Paul.                  |
| 1                 | Waconia St. Line                              | I-90 at LaCrescent.                |
| 1                 | I-90 at Dakota                                | MIN 80 at Wabasha.                 |

APPENDIX A—THE NATIONAL NETWORK—  
Continued[The National Network in the 50 States, the District of  
Columbia and Puerto Rico consists of the Interstate Sys-  
tem and the following highways]

| Post route<br>No. | From                                      | To                               |
|-------------------|-------------------------------------------|----------------------------------|
| US 61             | Jct. I-35 at Mesaba<br>in Duluth.         | Two Harbors (Jct.<br>CSAA 2).    |
| US 63             | MIN 58 at Red Wing                        | Wisconsin St. Line.              |
| US 63             | I-90                                      | US 52 at Rochester.              |
| MIN 65            | MIN 23 at Mora                            | I-694 at Fridley.                |
| MIN 68            | MIN 75 at Canby                           | MIN 19 at Marshall.              |
| US 71             | I-90 at Jackson                           | E. Jct. TH 212.                  |
| US 71             | W. Jct. MN 212                            | MIN 12 at Wilmar.                |
| US 71             | N. Jct. MN 23 N. of<br>Wilmar.            | I-94 at Sauk Centre.             |
| US 71             | MIN 27 at Long<br>Prairie.                | MIN 10 at Wadena.                |
| US 71             | MIN 10 at Wadena                          | MIN 34 at Park<br>Rapids.        |
| US 71             | Iowa St. Line                             | I-90 at Jackson.                 |
| US 71             | I-94 at Sauk Centre                       | MIN 27 at Long<br>Prairie.       |
| US 75             | MIN 7 near Odessa                         | I-94 at Moorhead.                |
| US 75             | I-90                                      | MIN 7 at Odessa.                 |
| US 75             | I-94 at Moorhead                          | MIN 2 at Crookston.              |
| US 75             | MIN 175 at Hallock                        | International Border.            |
| US 77             | I-35E at Eagan                            | I-494 at<br>Bloomington.         |
| MIN 100           | I-494 at Boomington                       | I-694 at Brooklyn<br>Center.     |
| MIN 101           | US 169 at Shakopee                        | MIN 13 at Savage.                |
| MIN 101           | I-94 at Rogers                            | MIN 10 at Elk River.             |
| MIN 109           | I-90 at Alden                             | M 22 at Wells.                   |
| MIN 110           | MIN 55 at Mendota<br>Heights.             | US 52 at Inver Grove<br>Heights. |
| MIN 127           | MIN 27 at Osakis                          | I-94 at Osakis.                  |
| US 169            | I-90 N. of Blue Earth                     | MIN 80 at Menkato.               |
| US 169            | MIN 101 at Shakopee                       | MIN 212 at<br>Charhassen.        |
| US 169            | I-94 at Brooklyn Park                     | MIN 152 at Osseo.                |
| US 169            | MIN 152 at Osseo                          | MIN 10 at Anoka.                 |
| US 169            | 95 at Princeton                           | MIN 23 at Milaca.                |
| US 169            | N. Jct. MN 60 at<br>Menkato.              | MIN 101 at<br>Shakopee.          |
| US 169            | MIN 95 at Princeton                       | US 10 at Elk River.              |
| US 169            | US at Grand Rapids                        | S. Jct. US 53 at<br>Virginia.    |
| US 169            | I-494 at Eden Prairie                     | MIN 100 at Edina.                |
| US 169            | MIN 100 at<br>Robbinsdale.                | I-94 at Brooklyn<br>Park.        |
| MIN 175           | MIN 75 at Hallock                         | MIN 59.                          |
| MIN 210           | MIN 169                                   | I-35 West of Carlton.            |
| MIN 210           | North Dakota St. Line<br>at Breckenridge. | MIN 59 at Fergus<br>Falls.       |
| MIN 210           | US 10 at Motley                           | US 169 NE of Altin.              |
| US 212            | South Dakota St.<br>Line.                 | I-494 at Eden Prairie.           |
| US 218            | I-90 at Austin                            | US 14 E. of<br>Owatonna.         |
| MIN 280           | I-94 in St. Paul                          | I-35W in Roseville.              |
| MIN 371           | US 10 at Little Falls                     | E. Jct. MN 210 at<br>Brainerd.   |
| MIN 371           | W. Jct. MN 210<br>Brainerd.               | US 2 at Cass Lake.               |



### APPENDIX A—THE NATIONAL NETWORK— Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No. | From | To |
|------------------|------|----|
|------------------|------|----|

NOTE: In addition Minnesota has made available all public roads to 102 inch wide vehicles (subject to local ordinance).

#### Mississippi

Under Mississippi State statute, all Federal-aid Primary Routes are available to commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act of 1982. In addition Mississippi has made available all other U.S. and State numbered routes in the State.

#### Missouri

|            |                                                 |                                                     |
|------------|-------------------------------------------------|-----------------------------------------------------|
| US 36      | Kansas St. Line                                 | Illinois St. Line.                                  |
| US 40      | I-70 St. Charles County.                        | I-55/70 St. Louis.                                  |
| US 169     | I-29 at Kansas City                             | MO 152 at Kansas City.                              |
| MO 725     | US 40 at St. Louis                              | St. Louis Co. Route D.                              |
| US 67      | Arkansas St. Line                               | Exit 174 on I-55.                                   |
| US 61      | I-70 St. Charles County.                        | Iowa St. Line.                                      |
| US 63      | Arkansas St. Line                               | Iowa St. Line.                                      |
| US 65      | Arkansas St. Line                               | Iowa St. Line.                                      |
| US 71      | Arkansas St. Line                               | I-435 Kansas City.                                  |
| US 71      | Exit 53 on I-29                                 | US 136 Maryville.                                   |
| Alt. US 71 | I-44                                            | US 71 Carthage.                                     |
| US 136     | Nebraska St. Line                               | Exit 110 on I-29.                                   |
| US 54      | South Junction US BR 54 at Lake Ozark.          | Illinois St. Line.                                  |
| US 80      | MO 37 Monett                                    | US 63 Cabool.                                       |
| US 24      | I-435 Kansas City                               | US 65 Waverly.                                      |
| MO 7       | US 71 Harrisonville                             | MO 13 Clinton.                                      |
| MO 13      | I-44 Springfield.                               | US 24 Lexington.                                    |
| US 50      | Exit 7 I-470 Kansas City.                       | Exit 247 on I-44.                                   |
| US 80      | Oklahoma St. Line                               | US 71.                                              |
| US 67      | MO 367                                          | Illinois St. Line.                                  |
| US 412     | Arkansas St. Line                               | Exit 19 on I-55.                                    |
| MO 84      | Arkansas St. Line                               | US 412 near Kennett.                                |
| MO 25      | US 412 near Kennett.                            | US 60 at Dexter.                                    |
| MO 5       | Arkansas St. Line                               | US 60.                                              |
| MO 47      | US 50 at Union                                  | MO 100 at Washington.                               |
| MO 100     | MO 47 at Washington.                            | I-44.                                               |
| MO 367     | I-270                                           | US 67.                                              |
| US 166     | Kansas St. Line                                 | I-44.                                               |
| MO 171     | Kansas St. Line at KS 57.                       | US 71 at Webb City.                                 |
| US 60      | 2 mi. E. of E. Jct. MO 21.                      | I-55/57 near Sikeston.                              |
| US 24      | US 61 Taylor                                    | Illinois St. Line.                                  |
| MO 37      | MO 76 Cassville                                 | US 60 Monett.                                       |
| US 59      | Kansas St. Line                                 | I-229 St. Joseph.                                   |
| US 24      | East Junction US 24 and US 36 in Marion County. | South Junction of US 24 and US 61 west of Hannibal. |

### APPENDIX A—THE NATIONAL NETWORK— Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No. | From | To |
|------------------|------|----|
|------------------|------|----|

#### Montana

Under Montana State statute, all Federal-aid Primary Routes are available to commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act of 1982 (STAA) with the following exceptions:

|             |                  |                                  |
|-------------|------------------|----------------------------------|
| MT 84       | US 287 Norris.   | US 191 near Bozeman, H. Springs. |
| US 67       | 1 mile post 79.3 | 1 mile post 82.5                 |
| Main Street | Lewistown        | Lewistown.                       |

NOTE: At the request of the State of Montana, we are publishing the following Federal-aid Primary Routes are available to commercial vehicles with the dimensions authorized by the STAA at 1982:

|        |                       |                    |
|--------|-----------------------|--------------------|
| US 2   | Idaho St. Line        | North Dakota Line. |
| US 12  | Idaho St. Line        | North Dakota Line. |
| US 89  | Canadian Border       | Wyoming St. Line   |
| US 310 | Wyoming St. Line      | Laurel.            |
| MT 200 | Idaho St. Line        | North Dakota Line. |
| US 93  | Idaho St. Line        | Canadian Border    |
| US 287 | Wyoming St. Line      | Choteau.           |
| US 87  | Wyoming St. Line      | Heavre.            |
| US 20  | Targhee Pass          | West Yellowstone   |
| MT 87  | Raynolds Pass         | US 287.            |
| MT 117 | Fork Peck             | Nashua.            |
| MT 22  | Miles City            | Jordon.            |
| MT 15  | Conrad                | Conrad.            |
| MT 5   | Scooby                | North Dakota Line. |
| MT 59  | Miles City            | Wyoming St. Line.  |
| MT 23  | Sidney                | North Dakota Line. |
| MT 7   | Ekaleka               | Wibaux.            |
| US 10  | North Dakota St. Line | Idaho St. Line.    |
| MT 24  | Canadian Border       | MT 200.            |
| MT 13  | Circle                | Canadian Border    |
| MT 37  | Libby                 | Eureka.            |
| MT 135 | St. Regis             | Paradise.          |
| MT 28  | Plains                | Elmo.              |
| US 212 | Crow Agency           | Wyoming St. Line.  |
| MT 40  | Whitefish             | Columbia Falls.    |
| MT 39  | Lame Deer             | Forsyth.           |
| MT 141 | Avon                  | MT 200.            |
| MT 44  | US 89                 | I-15.              |
| US 191 | West Yellowstone      | Malta.             |
| MT 43  | Idaho St. Line        | I-15.              |
| MT 48  | Anaconda              | Warm Springs.      |
| MT 47  | Hardin                | Custer.            |
| MT 41  | Dillon                | US 10.             |
| MT 16  | Canadian Border       | Glendive.          |
| MT 35  | Polson                | US 2.              |
| MT 3   | Billings              | Lavina.            |
| MT 55  | MT 41 Whitehall.      | Whitehall.         |
| MT 56  | MT 200                | US 2.              |
| MT 64  | US 191                | Mountain Village.  |
| MT 66  | US 191                | Fork Belnap.       |
| MT 67  | US 2 in Shelby        | I-15.              |
| MT 69  | Whitehall             | Boulder.           |
| MT 90  | I-90 Missoula         | Missoula.          |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No.        | From                  | To           |
|-------------------------|-----------------------|--------------|
| 172                     | Wyoming St. Line..... | US 310.      |
| 73                      | I-80 Lodge Grass..... | US 87.       |
| I-80                    | I-80                  | I-90 Wyoila. |
| MT 28                   | Hot Springs.....      | Hot Springs. |
| Red Lodge.....          | Columbus.             |              |
| Fort Benton.....        | Stanford.             |              |
| MT 80.....              | US 191.               |              |
| Somers.....             | MT 35 Big Fork.       |              |
| MT 200.....             | MT 35 Big Fork.       |              |
| US 191/I-90.....        | Belgrade.             |              |
| Bozeman.....            | US 89.                |              |
| I-90 Garrison.....      | Near I-80.            |              |
| Dillon.....             | I-15.                 |              |
| Wyoming St. Line.....   | US 310.               |              |
| Ennis.....              | Twin Bridges.         |              |
| MT 200 Graessrange..... | US 191 near Roy.      |              |
| Circle.....             | Glendive.             |              |
| I-80.....               | Drummond.             |              |
| I-94.....               | Terry.                |              |
| I-94.....               | Hysham.               |              |

Nebraska

Nebraska State statute, all Federal-aid Primary Routes available to commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act of 1962, with the following exceptions: US 159 from the junction with US 73 in Falls City east to Missouri; State Highway 2 from the junction with US 73/75 in Nebraska east to Iowa; US 34 from the junction with I-13G in Plymouth east to Iowa; and US 90 from the east junction with US 73 in the City of Blair east to Iowa. Nation Nebraska has made available all other U.S. and numbered routes.

Nevada

Nevada State statute, all Federal-aid Primary Routes available to commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act of 1962 (STAA) with the following exceptions:

|                          |                      |                     |
|--------------------------|----------------------|---------------------|
| US 50                    | Glenbrook.....       | California St. Line |
| US 395                   | Minden.....          | California St. Line |
| US 93                    | Boulder City.....    | Arizona St. Line    |
| California St. Line..... | California St. Line. |                     |
| US 395                   | Stewart.             |                     |
| US 395, Carson.....      | Utah St. Line        |                     |
| California St. Line..... | I-80                 |                     |
| I-80.....                | Oregon St. Line      |                     |
| California St. Line..... | US 95 Coaldale       |                     |
| US 95 Tonopah.....       | US 50 Ely.           |                     |
| Buchanan Blvd.           | US 95.               |                     |
| Boulder City.....        |                      |                     |
| I-15.....                | US 50.               |                     |
| US 50.....               | Idaho St. Line.      |                     |
| US 95 Schurz.....        | I-80.                |                     |
| I-80.....                | US 50.               |                     |
| US 93.....               | I-80 Wendover.       |                     |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No.     | From                    | To                        |
|----------------------|-------------------------|---------------------------|
| <b>New Hampshire</b> |                         |                           |
| US 3.....            | Massachusetts St. Line. | 101A Nashua.              |
| Everett              | 101A Nashua.....        | I-293 Bedford.            |
| Tumpike.             |                         |                           |
| US 4 and             | I-95 Portsmouth Exit 6. | NH 125 Rochester Exit 12. |
| Spaulding            |                         |                           |
| Tumpike.             |                         |                           |
| US 3.....            | I-93 North Woodstock.   | I-93 near Franconia.      |
| NH 18.....           | I-93 Littleton.....     | Vermont St. Line.         |

New Jersey

|                           |                                                |                                            |
|---------------------------|------------------------------------------------|--------------------------------------------|
| Atlantic City Expressway. | Baltic Avenue in Atlantic City.                | NJ 42 Turnersville.                        |
| NJ 42.....                | Atlantic City Expressway at NJ 168 Washington. | I-295 Bellmawr.                            |
| US 322.....               | Pennsylvania St. Line..                        | US 130 Bridgeport.                         |
| US 130.....               | US 322 Bridgeport.....                         | I-295 Logan Township.                      |
| US 130.....               | NJ 44 West Deptford..                          | I-295 West Deptford.                       |
| New Jersey                | I-295 Deepwater.....                           | Exit 6 Mansfield.                          |
| Tumpike.                  |                                                |                                            |
| NJ 440.....               | I-95 Edison.....                               | New York St. Line at Outerbridge Crossing. |
| NJ 81.....                | I-95 Elizabeth.....                            | US 1 Elizabeth.                            |

The following two sections of the New Jersey Turnpike were added to the Interstate System on March 3, 1983, and are not signed as Interstate. The route segments are listed since the public may be unaware of this designation.

|              |                         |                   |
|--------------|-------------------------|-------------------|
| Pennsylvania | Pennsylvania St. Line.. | Exit 6 Mansfield. |
| Turnpike     |                         |                   |
| Connector.   |                         |                   |
| New Jersey   | Exit 6 Mansfield.....   | Exit 10 Edison.   |
| Turnpike.    |                         |                   |

New Mexico

|             |                       |                    |
|-------------|-----------------------|--------------------|
| US 56.....  | I-25 Springer.....    | Oklahoma St. Line. |
| US 62.....  | US 285 Carlsbad East. | Texas St. Line.    |
| US 70.....  | I-10 Las Cruces.....  | US 54 Tularosa.    |
| US 70.....  | US 285 Roswell.....   | US 64 Clovis.      |
| US 84.....  | I-40 Santa Rosa.....  | Texas St. Line.    |
| US 87.....  | US 56 Clayton.....    | Texas St. Line.    |
| US 285..... | Texas St. Line.....   | Colorado St. Line. |
| US 550..... | US 666 Shiprock.....  | Colorado St. Line. |
| US 686..... | I-40 Gallup.....      | Colorado St. Line. |
| US 60.....  | Arizona St. Line..... | I-25 Socorro.      |
| US 64.....  | I-40.....             | Colorado St. Line. |
| US 70.....  | Arizona St. Line..... | Lordsburg.         |
| US 80.....  | Arizona St. Line..... | I-10.              |
| NM 504..... | Arizona St. Line..... | US 666 Shiprock.   |
| US 160..... | Arizona St. Line..... | Colorado St. Line. |

# APPENDIX A—THE NATIONAL NETWORK— Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No.   | From                            | To                                     |
|--------------------|---------------------------------|----------------------------------------|
| <b>New York</b>    |                                 |                                        |
| NY 17 .....        | Exit 24 Allegany .....          | I-87 Thruway Exit 16 at Harriman.      |
| US 219 .....       | NY 39 Springville .....         | I-90 Thruway Exit 55.                  |
| NY 400 .....       | I-90 Thruway Exit 54 .....      | NY 16 South Wales.                     |
| NY 198 .....       | I-190 Thruway Exit N11.         | NY 33 Buffalo.                         |
| NY 33 .....        | Michigan Avenue Buffalo.        | Greater Buffalo International Airport. |
| NY 179 .....       | NY 5 Windom .....               | I-90 Windom.                           |
| Walden Avenue.     | I-90 Thruway Exit 52 .....      | NY 277, Cheektowaga.                   |
| NY 390 .....       | I-490 Rochester .....           | NY 18 North Greece.                    |
| NY 590 .....       | I-490 Rochester .....           | NY 104 Irondequoit.                    |
| Inner Loop .....   | I-490 Rochester .....           | I-490 Rochester.                       |
| NY 690 .....       | I-90 Lakeland .....             | NY 370 Baldwinsville.                  |
| NY 481 .....       | I-81 North Syracuse .....       | NY 3 Fulton.                           |
| NY 695 .....       | NY 5 Fairmont .....             | I-690 Solvay.                          |
| NY 5 .....         | Maple Avenue Camillus.          | West Genesee Street Fairmont.          |
| US 15 .....        | Interchange in Presho.          | NY 17 Corning.                         |
| NY 12 .....        | I-790 near I-90 Utica .....     | Putnam Road Trenton.                   |
| NY 8 .....         | County Road 9 Saugoit.          | I-790 Utica.                           |
| NY 365 .....       | I-90 Thruway Exit 33 .....      | NY 49 Rome.                            |
| NY 49 .....        | NY 365 Rome .....               | NY 291 near Oriskany.                  |
| NY 254 .....       | I-87 Glen Falls .....           | 0.3 miles East of US 9.                |
| Berkshire Thruway. | I-87 Thruway Exit 21A.          | I-90 Thruway Exit B1.                  |
| US 9 .....         | 0.6 miles South of NY 254.      | 0.5 miles north of NY 254.             |
| NY 7 .....         | Schenectady-Albany County Line. | I-87 Colonie.                          |
| NY 5 .....         | East City Line of Schenectady.  | I-87 Colonie.                          |
| NY 17 .....        | New Jersey St. Line .....       | I-87 Suffern.                          |
| NY 104 .....       | Maplewood Drive Rochester.      | Monroe-Wayne County Line.              |
| NY 5 .....         | NY 179 Windom .....             | NY 75 Mount Vernon.                    |
| US 20 .....        | NY 75 Mount Vernon .....        | Howard Road Mount Vernon.              |

# APPENDIX A—THE NATIONAL NETWORK— Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No. | From | To |
|------------------|------|----|
|------------------|------|----|

NOTE: I-495 (NY 495) from I-295 Clearview Expressway NY 25 at Exit 73 Riverside Suffolk was added to the Interstate System on Oct. 25, 1983.

The following Interstate routes in New York City are available to through traffic with operating limitations during the morning and evening peak traffic periods: I-95, from I-287 line to Westchester County Line; I-87, from I-85 to Westchester County Line; I-295, from I-85 to I-495; I-495, from I-295 to Nassau County Line.

Permits may be required for all other Interstates in New York City.

For specific information contact the following: New York Department of Transportation Traffic Council, Room 511, 51 Chambers Street, New York, New York 11007, Telephone (212) 566-3610.

I-495, from New York City line to NY 25 at Exit 73 is available to through traffic with operating limitations during the morning and evening peak traffic periods.

For specific information contact the following: New York Department of Transportation, State Office Campus, Washington Ave., Albany, New York 12232, (518) 455-1155.

| <b>North Carolina</b> |                                   |                                 |
|-----------------------|-----------------------------------|---------------------------------|
| US 19 .....           | US 64 near Ranger .....           | US 19A near Br. City.           |
| US 19A .....          | US 19 near Bryson City.           | US 19 near Lak Junaluska.       |
| US 25 .....           | South Carolina St. Line.          | I-26 near East Rock.            |
| US 221 .....          | Rutherfordton .....               | I-40 near Marion.               |
| US 1 .....            | US 74 at Rockingham.              | I-85 near Henderson.            |
| US 15 .....           | US 401 near Laurinburg.           | US 1 Aberdeen.                  |
| US 15 .....           | US 1 Northview .....              | US 64 Pittsboro.                |
| US 401 .....          | South Carolina St. Line.          | I-40 Raleigh.                   |
| US 17 .....           | South Carolina St. Line.          | Jct. US 74/76 W. of Wilmington. |
| US 17 .....           | SR 1409 .....                     | Virginia St. Line.              |
| US 76 .....           | Jct. US 17/74 West of Wilmington. | SR 1409.                        |
| SR 1409 (Truck Rt.).  | US 76 .....                       | US 17.                          |
| US 64 .....           | Tennessee St. Line .....          | Jct. US 19/129 near Ranger.     |
| US 64 .....           | US 1/70/401 Raleigh.              | US 17 Williamston.              |
| US 64 .....           | US 29 Lexington .....             | US 15 Pittsboro.                |
| US 258 .....          | NC 24 near Richlands.             | US 64 Tarboro.                  |
| US 601 .....          | South Carolina St. Line.          | US 74 near Mont.                |
| US 74 .....           | US 221 Rutherfordton.             | I-85 near Kings Mountain.       |
| US 220 .....          | US 74 in Rockingham.              | Virginia St. Line.              |
| NC 49 .....           | I-85 Charlotte .....              | US 52 Richfield.                |
| NC 18 .....           | I-40 near Morganton .....         | US 321 near Leno.               |
| US 321 .....          | I-40 near Hickory .....           | NC 90 near Leno.                |
| US 321 .....          | South Carolina St. Line.          | I-85 near Gaston.               |
| US 52 .....           | NC 24/27 Albemarle .....          | Virginia St. Line.              |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways.]

| State route No.             | From                          | To |
|-----------------------------|-------------------------------|----|
| NC 24/27 Spout Springs.     | US 1 Sanford.                 |    |
| I-40 Winston-Salem.         | US 29 Reidsville.             |    |
| I-85 Henderson.             | US 258 Murfreesboro.          |    |
| US 19 near Lake Junaluska.  | I-40 West of Clyde.           |    |
| US 70A near Smithfield.     | I-85 Durham.                  |    |
| US 70 near Princeton.       | US 70 near Smithfield.        |    |
| Kanby.                      | Gold Rock.                    |    |
| I-277, Charlotte.           | US 17 near Wilmington.        |    |
| US 18A Dillsboro.           | US 441 Franklin.              |    |
| US 52 Lexington.            | I-85 Greensboro.              |    |
| US 158 Murfreesboro.        | Virginia St. Line.            |    |
| South Carolina St. Line.    | I-77.                         |    |
| US 74 Charlotte.            | US 52 Albemarle.              |    |
| I-85 Greensboro.            | Virginia St. Line.            |    |
| US 17 Washington.           | US 64 near Zebulon.           |    |
| US 70 Kinston.              | US 264 Greenville.            |    |
| US 1 Raleigh.               | I-40.                         |    |
| US 70 Bethesda.             | I-40.                         |    |
| I-85 Salisbury.             | US 29-601 Salisbury.          |    |
| US 29-601 Salisbury.        | I-77 Statesville.             |    |
| Kure Beach.                 | I-95 Dunn.                    |    |
| US 1 Sanford.               | US 64 Siler City.             |    |
| I-40 Winston-Salem.         | US 421 Clinton.               |    |
| US 70 Marshallfield.        | Spout Springs.                |    |
| I-95, Fayetteville.         | US 70A near Beaufort.         |    |
| I-240 Asheville.            | Jct. US 19-23 near Mars Hill. |    |
| US 19-23 at Weaverville.    | US 25-70 Bypass at Marshall.  |    |
| I-85 N. of Fayetteville.    | I-95 S. of Fayetteville.      |    |
| US 52 at Richfield.         | US 64 at Asheville.           |    |
| US 421 W. of Winston-Salem. | SR 2007 W. of NC 66.          |    |

## North Dakota

|                        |                       |
|------------------------|-----------------------|
| South Dakota St. Line. | Canadian Border.      |
| South Dakota St. Line. | I-94 Jct.             |
| I-84 Jct./Bismarck.    | Canadian Border.      |
| South Dakota St. Line. | I-94 Jct./Jamestown.  |
| I-84 Jct./Jamestown.   | Carrington.           |
| Carrington.            | Canadian Border.      |
| I-29 Jct./Marvel.      | I-29 Jct./Joliette.   |
| Montana Border.        | US 85 Jct./Williston. |
| US-85 Jct.             | Minnesota St. Line.   |
| Carrington.            | US 2 Jct./Minot.      |
| US 2 Jct./Burlington.  | Canadian Border.      |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways.]

| Posted route No. | From                     | To                        |
|------------------|--------------------------|---------------------------|
| US 12            | Montana Border           | South Dakota St. Line.    |
| US 10            | I-94 Jct.                | Minnesota St. Line.       |
| ND 66            | Montana St. Line         | US 85.                    |
| ND 13            | I-29/Mooreton.           | Minnesota St. Line.       |
| ND 13            | ND 1/S. Jct.             | I-29/Mooreton.            |
| ND 11            | US 281 Jct./Ellendale E. | ND 1/Ludden.              |
| ND 1             | ND 11 Jct./Ludden.       | ND 13 Jct.                |
| ND 5             | Montana St. Line         | West Junction of U.S. 85. |
| ND 200           | Montana St. Line         | U.S. 85.                  |

## Ohio

Under Ohio State statute, all Federal-aid Primary Routes are available to commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act of 1982 except where posted or within certain municipalities where there are restrictions.

In addition, Ohio has made available all other public highways, except where posted or within certain municipalities where there are restrictions.

## Oklahoma

Under Oklahoma State statute, all Federal-aid Primary Routes with minor exceptions are available to commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act (STAA) of 1982. In addition, Oklahoma has made other routes available.

NOTE: At the request of the State of Oklahoma the following is a complete list of routes that are available to commercial vehicles with the dimensions authorized by the STAA of 1982:

|        |                      |                      |
|--------|----------------------|----------------------|
| US 56  | New Mexico St. Line  | Kansas St. Line.     |
| US 54  | Texas St. Line       | Kansas St. Line.     |
| US 59  | US 270 Heavener      | I-44 Afton.          |
| US 59  | OK 10 Welch          | Kansas St. Line.     |
| US 80  | Texas St. Line       | US 263 Ellis Co.     |
| US 60  | US 81 Pond Creek     | Missouri St. Line.   |
| US 62  | Texas St. Line       | US 281 Lawton.       |
| US 64  | US 58 Boise City     | OK 8 Alfalfa County. |
| US 64  | US 81 Enid           | I-35 Noble Co.       |
| US 84  | OK 99 Pawnee County. | US 69 Muskogee.      |
| US 66  | US 69 Commerce       | Kansas St. Line.     |
| US 62  | US 69 Muskogee       | Arkansas St. Line.   |
| US 70  | US 81 Waurika        | Arkansas St. Line.   |
| US 61  | Texas St. Line       | Kansas St. Line.     |
| US 63  | OK 3 Bryan's Corner  | Kansas St. Line.     |
| US 75  | Texas St. Line       | Kansas St. Line.     |
| US 169 | I-244 Tulsa          | Kansas St. Line.     |
| US 177 | US 70 Dickson        | US 60 Ponca City.    |
| US 69  | US 75 Atoka          | Kansas St. Line.     |
| US 77  | OK 11 Kildare        | Kansas St. Line.     |
| US 183 | Texas St. Line       | US 270 Sealing.      |
| US 271 | US 270 Wister        | US 59 Poteau.        |
| US 270 | US 177 Tecumseh      | Arkansas St. Line.   |
| US 259 | Texas St. Line       | US 270 LeFlore Co.   |
| US 281 | I-44 N. of Lawton    | Kansas St. Line.     |
| US 271 | Texas St. Line       | US 70 Hugo.          |
| US 271 | OK 3 Antlers         | Arkansas St. Line.   |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No.              | From                           | To                         |
|-------------------------------|--------------------------------|----------------------------|
| US 263                        | Texas St. Line                 | Kansas St. Line.           |
| US 267                        | Texas St. Line                 | Colorado St. Line.         |
| OK 3                          | US 54 Guymon                   | US 177 Shawnee.            |
| OK 3W                         | US 177 Asher                   | OK 99 Ada.                 |
| OK 3                          | OK 99 Ada                      | Arkansas St. Line.         |
| OK 15                         | US 263 Shattuck                | US 64 Enid.                |
| OK 33                         | US 183 near Custer City.       | Arkansas St. Line.         |
| OK 34                         | I-40 Elk City                  | US 64 Harper Co.           |
| OK 8                          | OK 58 Fairview                 | US 64 Alfalfa Co.          |
| OK 11                         | US 64 Cherokee                 | US 77 north of Ponca City. |
| OK 11                         | OK 99 Osage County             | OK 20 Skiatook.            |
| OK 45                         | US 281 Woods Co.               | OK 8 Alfalfa Co.           |
| OK 51A                        | US 270 Watonga                 | OK 58 Major Co.            |
| OK 53                         | OK 76 Fox                      | I-35 Springer.             |
| OK 58                         | OK 51 A                        | OK 8 Fairview.             |
| OK 5                          | US 183 Frederick               | OK 53 Walters.             |
| OK 67                         | US 75 Glenpool                 | US 64 Bdbby.               |
| OK 29                         | US 81 Marlow                   | I-35 near Wynnewood.       |
| OK 76                         | OK 7 Ratliff City              | OK 53 Fox.                 |
| OK 7                          | I-35 near Davis                | OK 1 Johnston Co.          |
| OK 7                          | US 281 Lawton                  | OK 76 Ratliff City.        |
| OK 8                          | US 283 Greer Co.               | I-40 Elk City.             |
| OK 9                          | OK 44 Lone Wolf                | US 177 Tecumseh.           |
| OK 9                          | US 69 Pittsburg Co.            | US 59 LeFlore Co.          |
| OK 39                         | OK 9 Tabler                    | OK 3W Asher.               |
| OK 44                         | US 283 Greer Co.               | OK 9 Lonewolf.             |
| OK 53                         | OK 5 Walters                   | US 81 Comanche.            |
| OK 36                         | OK 5 Tilman Co.                | US 281 near Lawton.        |
| OK 18                         | OK 51 Payne Co.                | US 60 Osage Co.            |
| OK 1                          | OK 12 Roff                     | US 270 Calvin.             |
| OK 20                         | OK 11 Skiatook                 | US 75 Tulsa County.        |
| OK 48                         | I-44 Bristow                   | US 84 Pawnee Co.           |
| OK 51                         | I-35 Payne Co.                 | Muskogee Turnpike.         |
| OK 51                         | Muskogee Turnpike              | US 62 Tahlequah.           |
| OK 16                         | US 75 Preston                  | US 64 Jamezville.          |
| OK 10                         | OK 2 Welch                     | US 59 Miami.               |
| OK 2                          | US 60 Vinita                   | OK 10 Welch.               |
| OK 2                          | US 271 Clayton                 | I-40 Warner.               |
| OK 19                         | I-35 Paul's Valley             | OK 3W Ada.                 |
| OK 99                         | US 70 Madill                   | OK 11 Osage Co.            |
| OK 199                        | I-35 Ardmore                   | US 70 Oakland.             |
| Cimarron Turnpike.            | I-35 Noble Co.                 | US 64 at OK 48.            |
| Muskogee Turnpike.            | OK 51 Broken Arrow             | I-40 Webbers Falls.        |
| Indian Nation Turnpike.       | US 70 Hugo                     | I-40 Henryetta.            |
| OK 9A                         | US 69 Pittsburg Co.            | OK 9 S. of Eufaula.        |
| OK 12                         | OK 7 Johnston Co.              | OK 1 Roff.                 |
| Cimarron Turnpike Connection. | US 77 north of Stillwater N.E. | Cimarron Turnpike.         |

## Oregon

|        |                     |                      |
|--------|---------------------|----------------------|
| OR 99E | Portland            | Salem.               |
| OR 99W | Portland            | Eugene.              |
| US 730 | I-64 Boardman       | Washington St. Line. |
| US 30  | Portland            | Astoria.             |
| US 97  | Washington St. Line | California St. Line. |
| US 20  | Bend                | Idaho St. Line.      |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No. | From                     | To                         |
|------------------|--------------------------|----------------------------|
| US 20            | Sisters                  | US 97 near B.              |
| US 20            | Newport                  | Sweet Home.                |
| OR 11            | Washington St. Line      | Pendleton.                 |
| US 101           | Washington St. Line      | US 26 Cannon Beach Jct.    |
| US 101           | OR 18 near Otis          | Newport.                   |
| US 101           | Florence                 | Port Orford.               |
| US 101           | Gold Beach               | Brookings.                 |
| OR 126           | Florence                 | Prineville.                |
| OR 58            | Eugene                   | US 97 near C.              |
| OR 31            | La Pine                  | US 395 Vale                |
| OR 62            | Medford                  | Trail.                     |
| US 199           | Grants Pass              | California St.             |
| US 26            | US 101 Cannon Beach Jct. | US 97 near M.              |
| US 26            | US 97 near Madras        | Mitchell.                  |
| US 395           | Umatilla                 | Stanfield.                 |
| US 395           | Pendleton                | Long Creek.                |
| US 395           | John Day                 | Burns.                     |
| US 395           | Riley                    | California St.             |
| OR 8             | Beverton                 | Forest Grove.              |
| OR 22            | OR 18 near Willamina.    | US 20 Santa                |
| OR 42            | Cooze Bay                | Coquille.                  |
| OR 6             | Tillamook                | US 26 near B.              |
| OR 18            | US 101 Otis              | OR 99W Day                 |
| US 197           | Washington St. Line      | OR 216 Max.                |
| OR 38            | Reedsport                | Anlauf.                    |
| OR 140           | Klamath Falls            | OR 39.                     |
| US 99E           | Albany                   | Junction City.             |
| OR 99            | Grants Pass              | I-5.                       |
| US 30            | In City of Pendleton     | Silverton.                 |
| OR 214           | Woodburn                 | I-5.                       |
| OR 217           | US 26                    | I-5.                       |
| OR 223           | OR 22 near Dallas        | Rickreall.                 |
| OR 224           | OR 99E                   | I-205.                     |
| OR 99            | Central Point            | Ashland.                   |
| OR 34            | Corvallis                | Lebanon.                   |
| OR 138           | Elkton                   | I-5.                       |
| OR 99            | OK 42                    | I-5.                       |
| OR 99            | OR 38                    | I-5.                       |
| US 30            | In City of Cascade Lock. | Condon.                    |
| OR 208           | Wasco                    | Kinzua Road.               |
| OR 207           | Cold Springs Jct.        | US 95, Burns Junction.     |
| OR 78            | Burns                    | Nevada St. Line.           |
| US 95            | OR 78, Burns Junction.   | Idaho St. Line.            |
| US 201           | Spur US-95               | Idaho St. Line.            |
| US 30 Bus        | US 201, Ontario          | Idaho St. Line.            |
| US 95 Spur       | US 201                   | Weiser.                    |
| US 95            | OR 78                    | Idaho St. Line.            |
| OR 19            | I-84, Arlington          | OR 206, Concord.           |
| US 101           | Brookings                | California St. Line.       |
| OR 35            | I-64                     | Baseline Rd. MP 82.11.     |
| OR 39            | OR 140                   | California St. Line.       |
| OR 47            | US 26 near Davies        | OR 99 W. near McMinnville. |
| US 101           | US 26 Cannon Beach Jct.  | MP 75.54 near Beaver.      |
| OR 224           | I-205                    | OR 212 near Red CK corner. |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways.]

| State                                                                                                                                                                                                                                                                                         | From                                             | To |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|----|
| OR 224 near Rock Creek Corner.<br>Monmouth.<br>LaGrande                                                                                                                                                                                                                                       | US 26 near Boring.<br><br>OR 22 near Eda Joseph. |    |
| I-44 (US 30) from I-205 to I-5 Portland was added to Interstate System on March 8, 1984.                                                                                                                                                                                                      |                                                  |    |
| Oregon has made available other routes that have no posted route numbers or are restricted to certain vehicles. Full information on Oregon's truck system is available from the Oregon State Highway Department, State Highway Building, Room 140, Salem, OR 97310, Telephone (503) 378-2568. |                                                  |    |

## Pennsylvania

|                                              |                                                                      |
|----------------------------------------------|----------------------------------------------------------------------|
| New Jersey State Line.                       | US 13.                                                               |
| Connecticut Lake Borough.                    | Northeast of Meadville at the terminus of the 4 lane bypass roadway. |
| Turnpike Interchange 16.                     | US 15.                                                               |
| US 1.                                        | PA 413.                                                              |
| Turnpike Interchange 17.                     | Harrisburg Expressway.                                               |
| PA 642 at West Milton.                       | White Deer Interchange.                                              |
| I-180 in Williamsport...                     | End of limited access near Williamsport City Line.                   |
| I-80, Interchange 12...                      | PA 89.                                                               |
| W. Virginia State Line.                      | I-79, Interchange 15.                                                |
| I-78 west of Fogelsville.                    | New Jersey State Line.                                               |
| Limited access west of Greensburg.           | End of limited access east Greensburg.                               |
| PA 462 West of York...                       | PA 462 East of Lancaster.                                            |
| Limited access south of Uniontown.           | US 30 (Greensburg Bypass).                                           |
| Delaware State Line....                      | I-76 Interchange 26 (King of Prussia).                               |
| Interchange w/PA 801 north of Somerset.      | US 422.                                                              |
| South Bradford Interchange.                  | New York State Line.                                                 |
| Turnpike Interchange 11.                     | King.                                                                |
| Junction of US 15 & I-180.                   | End of limited access near Linden.                                   |
| PA 199 South of Athens.                      | New York State Line (N.Y. 17).                                       |
| Turnpike Interchange 21.                     | US 30.                                                               |
| End of limited access in Wyomissing Borough. | Pricetown Road North of Reading.                                     |
| Commodore Barry Bridge.                      | I-95.                                                                |
| I-83/I-283                                   | US 422/PA 39 Interchange.                                            |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways.]

| Posted route No.                  | From                      | To                                           |
|-----------------------------------|---------------------------|----------------------------------------------|
| US 422 .....                      | US 322/PA 39 Interchange. | Hockersville Road, Hershey.                  |
| US 422 .....                      | Neversink Road, Reiffton. | Warren Street Bypass.                        |
| PA 3 .....                        | US 202 .....              | Garrett Road, Upper Darby.                   |
| PA 9 .....                        | Turnpike, Interchange 25. | I-81, Interchange 58 North of Scranton.      |
| PA 26 .....                       | PA 8 .....                | Craigton.                                    |
| PA 33 .....                       | US 22 .....               | I-80.                                        |
| US 209 .....                      | PA 33 Snyder'sville.      | I-80 Stroudsburg.                            |
| PA 42 .....                       | I-80, Interchange 34      | US 11.                                       |
| PA 51 .....                       | US 119 .....              | Monongahela River.                           |
| PA 54 .....                       | I-80, Interchange 33      | US 11 Danville.                              |
| PA 60/US 422.                     | I-80, Interchange 1 ..... | 1 mile east of PA 65 on US 422.              |
| PA 60 .....                       | PA 51 .....               | US 22.                                       |
| PA 61 .....                       | US 222 Tuckerton.         | I-78, Interchange 9.                         |
| PA 93 .....                       | I-81, Interchange 41      | PA 924 Hazleton.                             |
| PA 114 .....                      | US 11 near Hoge'stown.    | I-81 Interchange 18.                         |
| PA 132 .....                      | I-95 .....                | Turnpike Interchange 28 via US 1 connection. |
| PA 263 .....                      | I-263, Interchange 2      | US 30.                                       |
| PA 924 .....                      | I-81, Interchange 40      | PA 93 Hazleton.                              |
| Harrisburg Expressway (L.R. 767). | I-83, Interchange 20      | US 11/15.                                    |
| Airport Access Rd. (L.R. 1035).   | PA 263 .....              | Harrisburg International Airport.            |
| Reading Outer Loop (L.R. 1035).   | PA 183 .....              | US 222.                                      |

NOTE 1: PA 147 and US 220 from I-80 Interchange 31 near Milton north and east to US 15 in Williamsport were approved as part of the Interstate System (I-180) on September 23, 1983.

NOTE 2: Pennsylvania has a substantial number of access routes. Information on these routes may be obtained from: Pennsylvania Department of Transportation, Commonwealth Avenue, Harrisburg, Pennsylvania, 17120 Attn: Bureau of Maintenance and Operations. The following three access routes designated by Pennsylvania are being published to inform the public because they are of significant length and provide desirable connectivity:

|              |              |                                                 |
|--------------|--------------|-------------------------------------------------|
| US 22 .....  | US 219 ..... | US 220.                                         |
| US 220 ..... | King .....   | I-80 Int. 23.                                   |
| PA 100 ..... | US 202 ..... | 1.1 miles north of Pa. Turnpike (I-76) Int. 23. |

## Puerto Rico

|             |                                           |                 |
|-------------|-------------------------------------------|-----------------|
| PR 2 .....  | PR 22 San Juan .....                      | PR 1 Ponce.     |
| PR 3 .....  | North Entrance Roosevelt Roads Navy Base. | PR 26 Carolina. |
| PR 52 ..... | PR 1 Ponce .....                          | PR 18 San Juan. |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No. | From                | To               |
|------------------|---------------------|------------------|
| PR 18.....       | PR 52 San Juan..... | PR 22 San Juan.  |
| PR 22.....       | PR 26 San Juan..... | PR 165 Toa Baja. |
| PR 165.....      | PR 22 Toa Baja..... | PR-2 Toa Baja.   |
| PR 22.....       | PR 2 Arecibo.....   | PR-2 Hatillo.    |
| PR 26.....       | PR 22 San Juan..... | PR 3 Carolina.   |
| PR 1.....        | PR 2 Ponce.....     | PR 52 Ponce.     |
| PR 30.....       | PR-52 Caques.....   | PR 3 Humacao.    |

## Rhode Island

|             |                        |                         |
|-------------|------------------------|-------------------------|
| RI 37.....  | I-295 Cranston.....    | I-95 near Lincoln Park. |
| RI 195..... | I-295 Johnston.....    | RI 10 Providence.       |
| RI 10.....  | RI 195 Providence..... | I-95 Cranston.          |
| RI 146..... | I-95 Providence.....   | I-295 near Lime Rock.   |

## South Carolina

|                   |                              |                                      |
|-------------------|------------------------------|--------------------------------------|
| US 78.....        | Georgia St. Line.....        | I-95 near St. George.                |
| US 378.....       | SC 262 Columbia.....         | US 501 Conway.                       |
| SC 72.....        | US 25 Bypass, Greenwood..... | SC 72 Bypass, Rockhill.              |
| SC 72 Bypass..... | SC 72, Rockhill.....         | US 21 Bus., Rockhill.                |
| US 21 Bus.....    | SC 72 Bypass, Rockhill.....  | US 21, Rockhill.                     |
| US 21.....        | US 21 Bus., Rockhill.....    | I-77, Rockhill.                      |
| US 123.....       | Georgia St. Line.....        | US 25 Greenville.                    |
| US 76.....        | US 52, Florence.....         | SC 576 near Marion.                  |
| SC 576.....       | US 76 near Marion.....       | US 501 near Marion.                  |
| US 501.....       | SC 576, Marion.....          | US 17, Myrtle Beach.                 |
| US 25.....        | North Carolina St. Line..... | US 25 Bypass, Greenwood.             |
| US 25 Bypass..... | US 25, N. of Greenwood.....  | US 25, S. of Greenwood.              |
| US 25.....        | US 25, S. of Greenwood.....  | US 78, North Augusta.                |
| SC 121.....       | SC 72, Whitmire.....         | US 25, Trenton.                      |
| US 321.....       | I-26 South of Columbia.....  | I-95 near Hardeeville.               |
| US 601.....       | North Carolina St. Line..... | SC 9 Pageland.                       |
| SC 151.....       | SC 9, Pageland.....          | US 52 Darlington.                    |
| US 15.....        | North Carolina St. Line..... | US 52, Society Hill.                 |
| US 52.....        | US 15, Society Hill.....     | US 52/I-26 Connector at Goose Creek. |
| US 17.....        | I-95 near Pocatoligo.....    | US 21 Gardens Corner.                |
| US 21.....        | US 17, Gardens Corner.....   | SC 170, Beaufort.                    |
| US 17.....        | I-26 Charleston.....         | North Carolina St. Line.             |
| US 276.....       | I-85, Greenville.....        | I-385 near Simpsonville.             |
| SC 277.....       | I-77 near Columbia.....      | US 76, Columbia.                     |
| US 76.....        | SC 277, Columbia.....        | I-126, Columbia.                     |
| US 301.....       | US 321, Ulmer.....           | I-95 Santee.                         |
| US 601.....       | I-26 near Jamison.....       | US 178/US 21 Bypass, Orangeburg.     |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No.      | From                   | To                 |
|-----------------------|------------------------|--------------------|
| US 178/21 Bypass..... | US 601 Orangeburg..... | US 301 Orangeburg. |
| US 78.....            | I-26 Goose Creek.....  | US 52 Goose Creek. |

NOTE 1: On US 17 (I-26, Charleston to North Carolina Line), use Siles Pearson Bridge only.

NOTE 2: US 276, from I-26 north of Clinton to I-85 at Greenville was added to the Interstate System on Feb. 13, 1984. The route is to be numbered I-385.

## South Dakota

Under South Dakota State statute, all Federal-aid Primary Routes are available to commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act of 1982. In addition, the South Dakota Department of Transportation has advised that all of the roads within the State that are under the jurisdiction of the State Department of Transportation may be used by vehicles eligible to use the National Network. Additional non-National Network roads within the State are under jurisdiction of local authorities, who may determine if roads under their jurisdiction are also eligible for use by such vehicles.

## Tennessee

|                       |                                          |                                           |
|-----------------------|------------------------------------------|-------------------------------------------|
| TN 155.....           | I-40 in Nashville.....                   | I-85 in Nashville.                        |
| TN 137/US 23.....     | TN 67 Johnson City.....                  | TN 1 Kingsport.                           |
| US 51.....            | TN 300 in Memphis.....                   | Purchase Play Kentucky St. Line.          |
| US 45.....            | Mississippi St. Line.....                | US 45 Bypass Jackson.                     |
| US 45W/45 Bypass..... | Jackson.....                             | TN 3 in Union City.                       |
| US 79.....            | Memphis near I-40.....                   | Guthrie at US 4 Kentucky St. Line.        |
| US 641.....           | I-40 near Natchez Trace State Park.....  | Kentucky St. Line near TN 140.            |
| US 231.....           | Alabama St. Line near Fayetteville.....  | Kentucky St. Line near TN 52.             |
| US 127.....           | TN 29 in Chattanooga.....                | Static at Kentucky St. Line.              |
| US 27.....            | TN 153 in Chattanooga.....               | Kentucky St. Line.                        |
| US 25E.....           | I-81.....                                | Cumberland Gap Virginia St. Line.         |
| US 70 Alt.....        | Atwood at US 79.....                     | Huntingdon at TN 140.                     |
| US 70.....            | Huntingdon at TN 22.....                 | Dickson at TN 88.                         |
| US 70.....            | Sparta at TN 111.....                    | Crossville at US 170.                     |
| US 70 S.....          | Murfreesboro at US 231.....              | Sparta at TN 111.                         |
| US 64/41.....         | Memphis at TN 15.....                    | I-24 at Monteagle.                        |
| US 64.....            | Cleveland near I-40.....                 | Near Belltown at North Carolina St. Line. |
| US 43.....            | Near St. Joseph at Alabama St. Line..... | Lawrenceburg at TN 64.                    |
| US 72.....            | Alabama St. Line.....                    | I-24.                                     |
| TN 153.....           | I-75 near Chattanooga.....               | US 27 in Chattanooga.                     |
| TN 96.....            | US 70 in Dickson.....                    | I-40 near Dickson.                        |
| US 70.....            | TN 155 in Nashville.....                 | Sparta.                                   |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways:

| State route No. | From                 | To                     |
|-----------------|----------------------|------------------------|
| 8               | I-124 in Chattanooga | US 127 in Chattanooga. |
| 9               | I-124                | US 127.                |
| 10              | US 231 Murfreesboro  | TN 102 in Smyrna.      |
| 11              | I-40 at Jackson      | US 51 at Dyersburg.    |
| 12              | I-40 in Memphis      | US 51 in Memphis.      |
| 13              | I-75 near Cleveland  | US 64 near Cleveland   |

## Texas

Texas State statute, all Federal-aid Primary Routes available to commercial vehicles with the dimensions stated by the Surface Transportation Assistance Act of 1962, unless otherwise posted. In addition Texas has available all Federal-aid secondary routes, unless otherwise posted.

## Utah

|                                 |                                           |
|---------------------------------|-------------------------------------------|
| I-15 near Spanish Fork.         | US 6 Spanish Fork.                        |
| UT 214 Spanish Fork             | I-70 near Green River.                    |
| I-80 Silver Creek Jct.          | Colorado St. Line near Dinosaur, CO.      |
| I-15 near Nepht.                | I-15 near Nepht.                          |
| I-70 Salina Interchange.        | Idaho St. Line near Franklin, Idaho.      |
| I-15 Perry-Brigham Interchange. | I-15 2100 S. Interchange, Salt Lake City. |
| I-80 Lake Point Interchange.    | US 89 Salina.                             |
| Nevada St. Line                 | Colorado St. Line.                        |
| Monticello                      | I-70 Crescent Junction.                   |
| Arizona St. Line                | Sevier.                                   |
| Arizona St. Line                | UT 30 Garden City.                        |
| Idaho St. Line                  | Wyoming St. Line.                         |
| US 89 Garden City               | Colorado St. Line.                        |
| US 191 near Bluff               | Wyoming St. Line.                         |
| UT 30, Sage Creek Jct.          |                                           |

## Vermont

|                                                                                |                             |
|--------------------------------------------------------------------------------|-----------------------------|
| I-91 Interchange 3 north of Brattleboro.                                       | New Hampshire St. Line.     |
| Southern Terminus of the four lane divided highway in the town of Wallingford. | US 4 Rutland City.          |
| New York St. Line                                                              | East Limit of Rutland City. |

## Virginia

|                                   |                  |
|-----------------------------------|------------------|
| Route I-95 (Spotsylvania County). | Route 17 Bypass. |
|-----------------------------------|------------------|

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Posted route No. | From                                                  | To                                                         |
|------------------|-------------------------------------------------------|------------------------------------------------------------|
| VA 2/ US 17 Bus. | Route 17 (New Post)                                   | SCL Fredricksburg.                                         |
| VA 3             | Route 1 By-pass (Fredericksburg).                     | Route 20 (Wilderness).                                     |
| VA 7             | Route I-81 (Winchester).                              | 0.68 mile W. of W.C.L. Round Hill.                         |
| VA 10            | Route 58 By-Pass (Suffolk).                           | Route 666 (1.24 miles N. of Route 218 Bus. at Smithfield). |
| VA 10            | E.C.L. Hopewell                                       | 0.37 mile W. Route 156 in Hopewell.                        |
| VA 10            | Route 1 (Chesterfield County).                        | Route 827 (0.56 mile W. of W.C.L. of Hopewell).            |
| US 11            | Route I-81 (Interchange 4.9 Mile North of Lexington). | 0.16 Mile North Route 645 (Rockbridge County).             |
| US 11            | N. Intersection Rt. 220 Alt. (Botetourt County).      | 2.15 miles S. of N. Intersection Route 220 Alt.            |
| US 11            | Route 100 (Town of Dublin).                           | Route 643 (Pulaski County).                                |
| US 11            | 1.52 Miles N. Route 75.                               | Route 19 (Town of Abingdon).                               |
| US 13            | Maryland State Line                                   | Route I-64.                                                |
| US 17            | Route 134 (York County).                              | Route I-64 (City of Newport News).                         |
| US 17            | Route I-95 (Stafford County).                         | Route 29 (Opel).                                           |
| US 17            | Route I (Spotsylvania County).                        | Route 2/17 Bus. (New Post).                                |
| US 19            | Route I-81 via Routes 11 and 140 (Abingdon).          | Temp. Route 460 (Route 720) (Bluefield).                   |
| US 20            | Route I-64 (Albemarle County).                        | Carlton Road (City of Charlottesville).                    |
| US 23            | Tennessee St. Line                                    | Alt. Route 56 (Big Stone Gap).                             |
| US 23            | 0.33 Miles North Route 23 Business.                   | Kentucky St. Line.                                         |
| US 25            | Tennessee State Line.                                 | Kentucky State Line.                                       |
| US 29            | North Carolina St. Line.                              | Route I-66 (Gainesville).                                  |
| VA 30            | Route I-95 (Hanover County).                          | Route 1.                                                   |
| US 33            | North Carlton Street (Harrisonburg).                  | Route 340 (Elkton).                                        |
| US 33            | Route I-295 (Henrico County).                         | 0.66 mile W. Route I-295 (Hanover County).                 |
| US 33            | Route I-64 (New Kent County).                         | Route 30 E. Intersection (West Point).                     |
| VA 36            | Route I-95 (Petersburg).                              | Route 156 E. Intersection (Hopewell).                      |
| VA 37            | Route I-81 S. of Winchester.                          | Route I-81 N. of Winchester via Route 11.                  |
| VA 42            | Route 257 (Bridgewater).                              | Route 290 (Dayton).                                        |



### APPENDIX A—THE NATIONAL NETWORK— Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways.]

| Posted route No.                     | From                                             | To                                               |
|--------------------------------------|--------------------------------------------------|--------------------------------------------------|
| US 50 .....                          | Route 259 (Gore).....                            | Route 37 (Frederick County).                     |
| US 50 .....                          | Route I-81 (City of Winchester).                 | Apple Blossom Loop Road.                         |
| VA 57.....                           | Route 220 (Bassett Forks).                       | Route 666 (Bassett).                             |
| Old VA 57 (Commonwealth Blvd.)       | Route 57 E. (Market Street).                     | N. Fairy Street (City of Martinsville).          |
| US 58 .....                          | S. Fairy Street (Martinsville).                  | W.C.L. Emporia.                                  |
| US 58 .....                          | .6 mile E. of ECL Emporia.                       | S. Int. Route 35.                                |
| US 58 .....                          | N. Int. Route 35 (Courtland).                    | Routes 13 & I-264 (Bowers Hill).                 |
| Alt. US 58 .....                     | Route 19 (Hansonville).                          | Route 23 (Norton).                               |
| Alt. US 58 .....                     | Route 11 (Town of Abingdon).                     | 0.40 Mile West Route 11.                         |
| US 58 Bus .....                      | Route 58 (Starling Ave.) (City of Martinsville). | Route 721 (Henry County).                        |
| US 60 .....                          | 0.03 mile W. Route 887.                          | Route 522 West of Powhatan.                      |
| VA 75.....                           | Route I-81 (Town of Abingdon).                   | Route 11.                                        |
| VA 86 .....                          | Route 29 (Darville).....                         | North Carolina St. Line.                         |
| Richmond Petersburg Turnpike (I-95). | I-85 (City of Petersburg).                       | I-84 East (City of Richmond).                    |
| VA 100 .....                         | Route I-81 (Dublin Exit Pulaski County).         | Route 11 (Dublin).                               |
| VA 105 .....                         | Route 60 (City of Newport News).                 | Route I-64.                                      |
| VA 114 .....                         | Route 480 (Town of Christiansburg).              | 0.09 Mile East Route 750 (Montgomery County).    |
| VA 156 .....                         | Route 10 (Hopewell) ..                           | Route 36 (Hopewell).                             |
| VA 199 .....                         | Route 60 .....                                   | Route I-64 (York County).                        |
| VA 207 .....                         | Route I-95 (Carolina County).                    | 0.20 Mile South Route 619.                       |
| US 220 .....                         | North Carolina St. Line.                         | Route I-581 (Roanoke).                           |
| US 220 .....                         | Route I-81 (Botetourt County).                   | S.C.L. of Fincastle.                             |
| US 220 Bus .....                     | 0.16 Mile N. Route 825 (Henry County).           | Route 220 S. Int.                                |
| US 220 Bus .....                     | Route 220 (Bassett Forks) (Henry County).        | Route 58 (Starling Ave.) (City of Martinsville). |
| Alt. US 220 .....                    | Route I-81 (Botetourt County).                   | Route 11.                                        |
| VA 224 .....                         | Route 460 (City of Lynchburg).                   | Route 29.                                        |
| US 250 .....                         | East Int. Route 340 (Delphine Avenue).           | Route 254 (City of Waynesboro).                  |
| US 250 .....                         | Route I-81 (Augusta County).                     | Route 261 (Statler Blvd.) (City of Staunton).    |

### APPENDIX A—THE NATIONAL NETWORK— Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways.]

| Posted route No. | From                                                        | To                                      |
|------------------|-------------------------------------------------------------|-----------------------------------------|
| US 258 .....     | North Carolina St. Line.                                    | Route 58—Fry By-pass.                   |
| US 258 .....     | Route 143 (Jefferson Avenue) (Newport News).                | Route 10 (Berr Church).                 |
| VA 277 .....     | Route I-81 (Frederick County).                              | 1.60 Miles East Route I-81.             |
| US 301 .....     | Route 301 Bus. (Bowling Green).                             | Maryland St. U.                         |
| US 301 .....     | I-295 (Hanover County).                                     | Route 1250.                             |
| VA 337 .....     | (City of Norfolk) Routes 58 EB and 460 EB (St. Paul Blvd.). | Claremont Ave. (Route 58 Interchange)   |
| US 340 .....     | Route 7 By-Pass (Berryville).                               | West Virginia St. Line.                 |
| US 340 .....     | I-86 (Warren County) ..                                     | 2.85 miles N. E. Route 627 (Vl.         |
| US 360 .....     | Route I-84 (City of Richmond).                              | Route 150 (Chesterfield County).        |
| US 360 .....     | Route 58 (South Boston).                                    | Midland Road.                           |
| VA 419 .....     | Route I-81 (City of Salem).                                 | Route 19 at G. Hill.                    |
| US 460 .....     | Route 67 at Raven.....                                      | West Virginia St. Line.                 |
| US 460 .....     | Route 720 .....                                             | Route I-81 at Christiansburg.           |
| US 460 .....     | West Virginia St. Line.                                     | 0.08 mile East 1512.                    |
| US 460 .....     | Route I-581 at Roanoke.                                     | 1 Mile West of 24.                      |
| US 460 .....     | Route 224 .....                                             | Route I-85 St. Petersburg (Dinwiddie C. |
| US 460 .....     | 0.64 Mile East of Route 707.                                | Route 58 (Suffolk)                      |
| US 460 .....     | Route I-95 (Petersburg).                                    | Route 58 (Suffolk)                      |
| US 501 .....     | Route 360 S. Int. (Halifax).                                | 1.07 miles N. of 705 at Cross Junction. |
| US 522 .....     | Route 37 (Frederick County).                                | 0.80 Mile South Route 50.               |
| US 522 .....     | Route 50 (Frederick County).                                | S.C.L. Waynesboro.                      |
| VA 624 .....     | Route I-84 (Augusta County).                                |                                         |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Post route No. | From | To |
|----------------|------|----|
|----------------|------|----|

1. An access system which provides route continuity of access for the above network has been identified by this Act. For information on the access system or signed network contact the Highway & Traffic Safety Division, Virginia Department of Highways & Transportation, 1221 E. Broad St., Richmond, VA. 23219, phone (804) 786-2961.

2. Width and length restrictions will be enforced on I-1 through the Elizabeth River Downtown Tunnel from exit to Portsmouth. Alternate routing is available via I-1. For specific information on tunnel restrictions, contact Permit Section, Virginia Department of Highways and Transportation, 1221 E. Broad St., Richmond, VA 23219, phone (804) 786-2787.

## Washington

Washington State statute, all Federal-aid Primary routes are available to commercial vehicles with the exceptions authorized by the Surface Transportation Planning Act of 1982. In addition Washington has made available all other U.S. and State numbered routes.

## West Virginia

|                                 |                                     |
|---------------------------------|-------------------------------------|
| Jct. I-77 Bradley               | Jct. I-79 Gassaway                  |
| I-79 Morgantown                 | Maryland St. Line.                  |
| I-77 Parkersburg                | I-79 Clarkburg.                     |
| Virginia St. Line at Bluefield. | Virginia St. Line near Kelleyville. |
| I-64 Putnam County              | Jct. US 35 Winfield.                |
| Jct. WV 34 Winfield             | Ohio St. Line.                      |

The Governor has established a task group composed of the Department of Highway Commissioner, the Director of the Office of Economic and Community Development, the Superintendent of the Department of Public Safety and the Superintendent of the Department of Public Safety to view and evaluate additional route designations. The group will report its findings directly to the Governor.

## Wisconsin

|                                          |                                                                      |
|------------------------------------------|----------------------------------------------------------------------|
| US 53 SE of Superior                     | Michigan St. Line at Hurley.                                         |
| Michigan St. Line W. of Florence.        | Michigan St. Line E. of Florence.                                    |
| US 63 in Turtle Lake                     | Michigan St. Line at Norway.                                         |
| US 53 in Oaseo                           | I-43 N. of Manitowoc.                                                |
| US 61/151 E. of Dubuque.                 | US 51 in Janesville.                                                 |
| I-90 E. of Janesville                    | US 14-WI 89, 5 miles west of Delevan.                                |
| WI 15 E. of Elkhorn                      | WI 31 in Racine.                                                     |
| I-94 and County Hwy EE W. of Eau Claire. | US 53 in Eau Claire.                                                 |
| I-90/I-94 at Lake Delton.                | S. End of 4-Lane Pavement Badger Ordnance Plant South of W. Baraboo. |

APPENDIX A—THE NATIONAL NETWORK—  
Continued

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways]

| Post route No. | From                                  | To                                 |
|----------------|---------------------------------------|------------------------------------|
| US 12          | WI 87, 2 miles N. of Elkhorn.         | Illinois St. Line at Genoa City.   |
| WI 13          | WI 21 N. of Friendship.               | US 2 in Ashland.                   |
| US 14          | WI 51 N. of Janesville.               | I-90 at Janesville.                |
| US 14          | WI 11-89, 5 miles W. of Delevan.      | WI 15 at Darien.                   |
| WI 15          | I-90 at Beloit                        | US 45 in Greenfield.               |
| WI 16          | WI 78 at Portage                      | I-94 N. of Waukesha.               |
| WI 17          | US 8 in Rhinelander                   | US 45 in Eagle River.              |
| US 18          | Iowa St. Line at Prairie du Chien.    | I-90 S.E. of Madison.              |
| WI 20          | I-94 W. of Racine                     | WI 31 in Racine.                   |
| WI 21          | WI 27 in Sparta                       | US 41 at Oshkosh.                  |
| WI 23          | WI 32 N. of Sheboygan Falls.          | Taylor Drive in Sheboygan.         |
| WI 26          | I-94 at Johnson Creek.                | WI 16 at Watertown.                |
| WI 26          | US 151 N.E. of Waupun.                | US 41 S.W. of Oshkosh.             |
| WI 27          | US 14 at Westby                       | US 10 E. of Fairchild.             |
| WI 28          | US 41 E. of Theresa                   | Kewaskum.                          |
| WI 29          | I-94 W. of Elk Mound                  | US 53 at Chippewa Falls.           |
| WI 29          | WI 124 S. of Chippewa Falls.          | US 41 in Green Bay.                |
| WI 30          | US 151 in Madison                     | I-80 & I-94 E. of Madison.         |
| WI 31          | WI 11 in Racine                       | WI 20 in Racine.                   |
| WI 32          | WI 29 W. of Green Bay.                | Gillett.                           |
| WI 34          | WI 13 in Wisconsin Rapids.            | US 51 N.E. of Knowlton.            |
| US 41          | National Ave. in Milwaukee.           | Garfield Ave. in Milwaukee.        |
| US 41          | 107th St. in Milwaukee.               | Michigan St. Line at Marinette.    |
| WI 42          | I-43 W. of Manitowoc.                 | WI 57 S.W. of Sturgeon Bay.        |
| US 45          | Illinois St. Line, South of Bristol.  | WI 28 in Kewaskum.                 |
| US 45          | WI 29 in Wittenberg                   | Michigan St. Line at Land O'Lakes. |
| WI 47          | US 10 at Appleton                     | WI 29 in Bonduel.                  |
| WI 50          | I-94 W. of Kenosha                    | 45th Ave. in Kenosha.              |
| US 51          | South Corporate Limits of Janesville. | US 14 at Janesville.               |
| US 51          | WI 78 N. of Portage                   | US 2 N. of Hurley.                 |
| US 53          | US 14-61 in La Crosse.                | US 10 in Oaseo.                    |
| US 53          | I-94 S.E. of Eau Claire.              | I-535 in Superior.                 |
| WI 54          | WI 13 in Wisconsin Rapids.            | US 51 S.E. of Plover.              |
| WI 57          | I-43 in Green Bay                     | Sturgeon Bay.                      |
| US 61          | Iowa St. Line at Dubuque.             | WI 129 S.E. of Lancaster.          |
| US 61          | WI 129 N.E. of Lancaster.             | Minnesota St. Line at La Crosse.   |
| US 63          | Minnesota St. Line at Red Wing.       | US 2 W. of Ashland.                |
| WI 69          | WI 11 at Monroe                       | County Hwy. "PB" at Paoli.         |

# **APPENDIX A—THE NATIONAL NETWORK— Continued**

[The National Network in the 50 States, the District of Columbia and Puerto Rico consists of the Interstate System and the following highways.]

| Posted route No. | From                          | To                               |
|------------------|-------------------------------|----------------------------------|
| WI 73 .....      | US 51 at Plainfield.....      | WI 54 in Wisconsin Rapids.       |
| WI 78 .....      | I-90 & I-94 S. Portage.       | US 51 N. of Portage.             |
| WI 80 .....      | I-90 & I-94 N. of New Lisbon. | WI 13 at Pittsville.             |
| WI 119 .....     | I-94 in Milwaukee.            | WI 38 in Milwaukee.              |
| WI 124 .....     | US 53 N. of Eau Claire.       | WI 29 S. of Chippewa Falls.      |
| WI 129 .....     | US 61 S.E. of Lancaster.      | US 61 N.E. of Lancaster.         |
| WI 139 .....     | US 8 near Cavour.             | Long Lake.                       |
| WI 141 .....     | US 41 at Abrams.              | US 8 in Pembine.                 |
| WI 145 .....     | Broadway in Milwaukee.        | US 41-45 in Milwaukee.           |
| US 151 .....     | Iowa St. Line at Dubuque.     | US 18 E. of Dodgeville.          |
| US 151 .....     | I-90 & I-94 in Madison.       | US 41 at Fond du lac.            |
| WI 172 .....     | US 41 in Ashwaubenon.         | County Hwy. "X" S. of Green Bay. |
| County Hwy "PB". | WI 69 at Paoli .....          | US 18 E. of Verona.              |

## **Wyoming**

Under Wyoming State statute, all Federal-aid Primary Routes are available to commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act of 1982 except US 89 from Moran Jct. to Yellowstone Park and US 212 from the Montana St. Line through Bear Tooth Pass to the Montana St. Line. In addition Wyoming has made available all other U.S. and state number routes except all U.S. numbered routes in Yellowstone Park.

# **PART 659—CERTIFICATION OF SPEED LIMIT ENFORCEMENT**

Sec.

659.1 Purpose.

659.3 Objective.

659.5 Definitions.

659.7 Adoption of a national maximum speed limit.

659.9 Formulation of a plan for monitoring speeds.

659.11 Guidelines and evaluations of operations.

659.13 Certification requirement.

659.15 Certification content.

659.17 Certification and statistical submission.

659.19 Effect of failure to certify or to meet compliance standards.

659.21 Procedure for the reduction of funds.

**AUTHORITY:** 23 U.S.C. 141, 154, 315; sec. 205, Surface Transportation Assistance Act

of 1978, Pub. L. 95-599, 92 Stat. 2689; CFR 1.48(b) and 1.50.

**SOURCE:** 45 FR 64491, Sept. 29, 1980, unless otherwise noted.

## **§ 659.1 Purpose.**

To prescribe requirements for administering a program for monitoring speeds on public highways in order to provide reliable data to be included in a State's annual certification of speed limit enforcement.

## **§ 659.3 Objective.**

To establish a valid statistical method of measuring a sample of vehicle speeds on a sample of highways to estimate the percentage of vehicles exceeding 55 miles per hour (mph) with sufficient accuracy to support a determination of compliance with 23 U.S.C. 154. A secondary objective is to quantify the overall statewide distribution of speeds by comparing other characteristics which may indicate the level of enforcement or public compliance, such as average speed, median speed, 85th percentile speed, and percentage of vehicles exceeding 60 and 65 mph per hour.

## **§ 659.5 Definitions.**

As used in this part:

(a) "State" means any one of the States, the District of Columbia or Puerto Rico.

(b) "Highway" means all streets, roads or parkways under the jurisdiction of a State, including its political subdivisions, open for use by the general public, and including toll facilities.

(c) "Motor vehicle" means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or trolley line.

(d) "Posted" means those roads with a legal speed limit of 55 mph, excluding any unpaved roads and roads of the following functional classifications: Urban collector and local streets; rural local roads; and rural minor collectors. This includes both State-maintained and non-State-maintained roads, including toll roads.

1.7 Adoption of a national maximum speed limit.

1.8 Secretary of Transportation shall not approve any Federal-aid projects under 23 U.S.C. 106 in a State which fails to adopt or maintain maximum speed limits as follows:

The maximum speed limit on any highway in the State shall be 55 mph, except that emergency and motor vehicles may be authorized to operate at higher speeds when necessary to protect the public health or safety.

Except as provided in paragraphs 1.7(d) of this section, the speed limit on any portion of a highway shall be uniformly applicable to all classes of motor vehicles using such highway, if on November 1, 1970, such portion of highway had a speed limit which was uniformly applicable to all types of vehicles using it.

Notwithstanding the provisions of paragraph (b) of this section, a State may establish a lower speed limit for a motor vehicle operating under a special permit because of weight or dimension of such vehicle, or any load thereon.

Notwithstanding the provisions of paragraph (b) of this section, a State may specify nonuniform speed limits on any portion of a highway because of the condition of the highway, or an accident, or other condition which creates a temporary hazard to the free flow of traffic on such portion of a highway.

Formulation of a plan for monitoring speeds.

Each State shall develop a speed monitoring and analysis plan following guidelines set forth in the *Speed Monitoring Program Procedural Manual* (SMPPM), FHWA, 1980, which was published at 45 FR 64494 September 29, 1980. Copies of the SMPPM are available from the U.S. Department of Transportation, Federal Highway Administration, Office of Traffic Operations, Washington, D.C. The SMPPM is also available for inspection at the FHWA offices in 49 CFR Part 7, Appendix D. The plan shall discuss the following subjects as a minimum:

(1) Functional grouping of highways to be used:

(i) The functional class groupings of highways will be used to distribute the monitoring effort.

(ii) The groupings of functional classes of highway for the speed monitoring program shall be: *urban* (Interstate, other freeways and expressways, and other principal and minor arterials) and *rural* (Interstate, other principal and minor arterials, and major collector roads).

(2) Miles of highway with a 55 mph speed limit, by functional group:

(i) Miles of highway with a 55 mph speed limit shall be used in the selection of speed monitoring locations.

(ii) The proportion of paved highway mileage in each grouping subject to the 55 mph speed limit shall be determined by each State.

(3) Distribution of travel (VMT or DVMT) on highways with a 55 mph speed limit. The VMT by functional system shall be used to distribute the data collection effort and in the calculation of the statewide percent of vehicles exceeding 55 mph.

(4) Sources of speed data used in calculating sample size (default values or data from previous monitoring).

(5) Number of sampling locations and sessions and their distribution by system and geographic area, all of which shall be determined in accordance with the SMPPM. A sampling session shall consist of a single period of monitoring at a particular place (sampling location).

(i) The minimum sample size needed by each State shall be determined under both (A) the accuracy of statistical estimates concept and (B) the coverage of population sampled concept. Both concepts are fully explained in the SMPPM. The larger of the two numbers shall be used as the statewide minimum sample size.

(ii) A 24-hour monitoring period shall be required for individual sampling sessions beginning with FY 1982. During FY 1981, an alternative to the 24-hour session will be allowed as follows. With the approval of the FHWA Division Administrator, a State may, for FY 1981 only, substitute a minimum 3-hour data collection session during which the speeds of all vehicles

passing the sampling location in at least one direction shall be recorded. The State's request to use the reduced session shall be accompanied by a schedule which shows that sessions will be scheduled, as a minimum, to cover the entire normal work day of the State. The State's request shall also include a report of the steps being taken to implement 24-hour monitoring.

(6) Type and capabilities of speed measuring equipment to be used.

(7) Data collection.

(i) Schedule—a detailed schedule shall take into account day of the week, month, and season of the year.

(ii) Field data collection—the goal is to obtain, during each monitoring session, a representative record of the traffic speeds that normally occur in a given segment. Therefore, the choice of a data collection site within a given segment should reflect the geometric design conditions of the segment. In addition, the collection of data should not be attempted if conditions at a site are such that the normal flow of traffic is substantially restricted.

(8) Any deviation from the analysis methods described in the SMPPM.

(c) The guidelines set forth in the SMPPM rely on many assumptions. After a complete year's data are available, and thereafter on an annual basis, the plan shall be evaluated to determine its effectiveness in meeting the objective of the speed monitoring program. As a minimum, the evaluation shall discuss:

(1) The actual accuracy level obtained with regard to the statewide value for the percent exceeding 55 mph.

(2) Adjustments to the number of sampling locations in a State, necessary to achieve the target sampling accuracy called for in the SMPPM.

(3) The validity of the travel figures (vehicle miles of travel (VMT) or daily vehicle miles of travel (DVMT)) used.

(4) Any other changes to the plan proposed by the State.

[45 FR 64491, Sept. 29, 1980, as amended at 46 FR 21157, Apr. 9, 1981]

## § 659.11 Guidelines and evaluations of operations.

The State shall submit its plan to the FHWA Division Administrator for approval by November 1, 1980. The plan shall be evaluated annually and revised as conditions new data indicate. These evaluations shall be submitted to the FHWA Division Administrator for approval by December 1 following the close of data collection period of each year beginning with December 1, 1981, so changes to the plan called for by evaluation can go into effect with subsequent quarter beginning January 1.

## § 659.13 Certification requirement.

Each State shall certify to the Secretary of Transportation before January 1 of each year that it is enforcing the 55-mph National Maximum Speed Limit on all public highways in accordance with 23 U.S.C. 154. The certification shall be supported by information on activities and results achieved during the 12-month period ending September 30 preceding the January date by which certification is required.

## § 659.15 Certification content.

The certification shall consist of the following elements:

(a)(1) A statement by the Governor of the State, or an official designated by the Governor, that the 55-mph National Maximum Speed Limit is enforced on all public highways in the State. The certifying statement shall be worded as follows:

"I, (name of certifying official), (position title), of the (State or Commonwealth of \_\_\_\_\_), do hereby certify that \_\_\_\_\_ (State or Commonwealth) of \_\_\_\_\_ is enforcing the 55-mph National Maximum Speed Limit."

(2) If this statement is made by an official other than the Governor, a copy of the document designating the official, signed by the Governor, shall also be included in the first certification made under this part. This designation shall remain valid as long as the Governor or the designated official remains in the respective position. A new designation will be required with the first certification.

er either official leaves his/her position.

b) A copy of any State law, regulation, administrative order, statement of policy or any other written instruction relating to enforcement of the 55-mph National Maximum Speed Limit, which has not been included in earlier certifications, or a statement that there have been no changes to any documents previously submitted. The written enforcement agency policy for the 55 mph speed limit does not include a statement to that effect must be included.

c) Information relating to enforcement and monitoring as follows:

(1) Miles of highway with a 55 mph speed limit, by functional group.

(2) The number of citations issued by State agencies for violation of the 55 mph speed limit during each month of the 12-month period ending on September 30 before the date by which certification is required.

(3) The statewide percentage of vehicles exceeding the 55 mph speed limit weighted by the proportion of total 55 mph VMT on each of the highway functional groupings.

17 Certification and statistical submittal.

The Governor, or an official designated by the Governor, each year shall submit the certification to the FHWA Division Administrator. The FHWA Division Administrator shall retain the original and forward copies each to the Regional Administrator of NHTSA and FHWA. Regional Administrators shall retain one copy and forward one of the submission, with any pertinent comments, to their respective Washington Headquarters, attention of the Chief Counsel.

Any changes to the original certification or supplemental information submitted by the review of the certifications as they are forwarded shall be submitted in the same manner as the original (see § 659.17(a)).

As described in § 659.15(d), the statewide percentage of vehicles exceeding 55 mph is the only direct result of the speed monitoring program that is required for inclusion in annual certification. However, additional

summary statistics from the speed monitoring program will also be required. A report of the average speed, median speed, 85th percentile speed, and percent of vehicles exceeding 55, 60, and 65 miles per hour shall be submitted by each State to the FHWA Division Administrator on a quarterly basis for the 3-month periods ending December 31, March 31, June 30, and September 30 of each year. The report covering the July-September quarter shall be a summary encompassing the entire year's data (starting from the previous October 1).

**§ 659.19 Effect of failure to certify or to meet compliance standards.**

(a) If a State fails to certify as required by § 659.13 or if the Secretary determines that a State is not adequately enforcing the 55-mph National Maximum Speed Limit on all public highways notwithstanding the State's certification, no Federal-aid highway project shall be approved under 23 U.S.C. 106 in that State.

(b) Beginning with the certification submitted before January 1, 1980, for the 12-month period ending September 30, 1979, in those States whose certification indicated that the percentage of motor vehicles exceeding 55 mph was greater than 70 percent, the State's apportionment of Federal-aid highway funds under 23 U.S.C. 104(b)(1), 104(b)(2), and 104(b)(6) would have been reduced in an aggregate amount of up to 5 percent of the amount to be apportioned for the fiscal year ending September 30, 1981. The following schedule will apply to subsequent years:

(1) If the certification of January 1, 1981, shows a percentage exceeding 55 mph greater than 60 percent, an aggregate amount of up to 5 percent of apportioned funds for the fiscal year ending September 30, 1982, shall be withheld.

(2) If the certification of January 1, 1982, shows a percentage exceeding 55 mph greater than 50 percent, an aggregate amount of up to 5 percent of apportioned funds for the fiscal year ending September 30, 1983, shall be withheld.

(3) If the certification of January 1, 1983, shows a percentage exceeding 55 mph greater than 40 percent, an aggregate amount of up to 10 percent of apportioned funds for the fiscal year ending September 30, 1984, shall be withheld.

(4) If the certification of January 1, 1984, and each succeeding year shows a percentage exceeding 55 mph greater than 30 percent, an aggregate amount of up to 10 percent of apportioned funds for the fiscal year ending September 30, 1985, and each succeeding fiscal year thereafter shall be withheld.

(c) Where a reduction in apportioned funds pursuant to paragraph (b) of this section will result in a hardship to a State, the fiscal year apportionment reduced for such State shall be the apportionment for one fiscal year later than set forth in paragraph (b) of this section. The State must submit a claim of hardship in writing supported by sound reasoning and indications that corrective or remedial measures are to be undertaken to improve the State's compliance posture. Hardship under this paragraph relates to adverse impacts (e.g., economic or environmental) which would result from a delay in the letting of Federal-aid highway projects.

(d) Funds withheld pursuant to paragraph (b) of this section shall be apportioned to a State upon a determination that the percentage of motor vehicles in such State exceeding 55 mph has dropped to the level specified for the fiscal year in which speed monitoring results lead to funds being withheld. Such a determination shall be made on the basis of the following year's monitoring results.

#### § 659.21 Procedure for the reduction of funds.

(a) In addition to the procedure set forth in § 659.19(b) for a State which fails to meet the specified compliance standards, if a State has not submitted a certification conforming to the requirements of this part, or the State is not adequately enforcing the 55-mph National Maximum Speed Limit, the FHWA and NHTSA Administrators shall make, in writing, a proposed determination of nonconformity, and

shall notify the Governor of the State of the proposed determination by certified mail. The notice shall state reasons for the proposed determination and inform the State that it must, within 20 days from the date of letter, request a hearing to show why it should not be found in nonconformity. If the State informs the Administrators before the end of the day period that it wishes to attempt to resolve the matter informally, the Administrators may extend the time requesting a hearing by an additional 20 days. In the event of a request for an informal resolution, the State and Administrators (or designees) promptly schedule a meeting to solve the matter.

(b) In all instances where the matter proceeds on the basis of informal resolution, a transcript of the conference will be made and furnished to the State by the FHWA or NHTSA.

(1) The State may offer any action or resolution which it considers helpful to the resolution of the matter, and the scope of review at the conference shall include, but not be limited to, legislative actions, including those proposed to remedy deficiencies, budgetary considerations, judicial actions, and proposals for specific actions which will be implemented to bring the State into compliance.

(2) The information produced at the conference may constitute an offer of settlement and offer of settlement. The Administrators will make a determination on the basis of the certified record of the conference, and other information submitted by the State. The Administrators' final decision together with a copy of the transcript of the conference will be furnished to the State.

(3) If the Administrators do not accept an offer of settlement pursuant to paragraph (b)(2) of this section, the State retains the right to request a hearing on the record pursuant to paragraph (d) of this section.

(c) If a State does not request a hearing in a timely fashion as provided in paragraph (a) of this section, the Administrators shall forward the proposed determination to the Secretary. Upon acceptance of the determination by the Secretary, the provisions

§ 660.19(a) shall take effect immediately.

1) If a State requests a hearing, the Secretary shall expeditiously convene a hearing on the record, which shall be conducted according to the provisions of the Administrative Procedure Act, 5 U.S.C. 551 et seq. Based on the record of the proceeding, the Secretary shall determine whether the State is in nonconformity with this Act. If the Secretary determines that the State is in nonconformity under the provisions of § 659.19(b), the Administrator shall jointly notify the Governor of the State of the determination of nonconformity and of the apportionment of the reduction in apportioned funds. The Governor shall also be informed that the State may request a hearing within 20 days from the date of the notification of a delay in the penalty on the basis of a hardship pursuant to § 659.19(c). While no hearing shall be held on the question of nonconformity, the State may request an informal meeting to discuss the proposed amount of the withholding and hardship request, if any. In the event of a request for such an informal meeting, the State and the Administrator (or designees) shall jointly schedule a meeting to rehear the matter. No later than 60 days following the meeting, a final determination shall be made with regard to the amount of the withholding and hardship request, if any.

## RT 660—SPECIAL PROGRAMS (DIRECT FEDERAL)

### Subpart A—Forest Highways

- 1 Purpose.
- 2 Definitions.
- 3 Designation of forest highways.
- 4 Allocations.
- 5 Program and project selection.
- 6 Agreements.
- 7 Construction.
- 8 Maintenance.
- 9 Funding, records and accounting.

### Subparts B—D [Reserved]

### Subpart E—Defense Access Roads

- 1 Purpose.
- 2 Objectives.

Sec.

- 660.505 Scope.
- 660.507 Definitions.
- 660.509 General principles.
- 660.511 Eligibility.
- 660.513 Standards.
- 660.515 Project administration.
- 660.517 Maneuver area roads.
- 660.519 Missile installations and facilities.

### Subpart A—Forest Highways

**AUTHORITY:** 16 U.S.C. 1608-1610; 23 U.S.C. 101, 204, 315; 49 CFR 1.48(b).

**SOURCE:** 47 FR 10527, Mar. 11, 1982, unless otherwise noted.

#### § 660.101 Purpose.

To enhance local, regional, and national benefits by providing for the construction and maintenance of forest highways which serve the National Forest System and its renewable resources.

#### § 660.103 Definitions.

In addition to the definitions in 23 U.S.C. 101(a), the following apply to this subpart:

(a) *Cooperator*—a State or local government agency which has jurisdiction over and/or maintenance responsibility for forest highways.

(b) *Forest highway*—a forest road under the jurisdiction of, and maintained by, a public authority and open to public travel.

(c) *Forest road*—a road wholly or partly within, or adjacent to, and serving the National Forest System and which is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

(d) *National Forest System (NFS)*—lands and facilities administered by the Forest Service (FS), U.S. Department of Agriculture, as set forth in the National Forest Management Act of 1976, as amended (16 U.S.C. 1609(a)).

(e) *Open to public travel*—except during scheduled periods, extreme weather conditions, or emergencies, open to the general public for use with a standard passenger auto, without restrictive gates or prohibitive signs or regulations, other than for general



traffic control or restrictions based on size, weight, or class of registration.

(f) *Renewable resources*—those matters within the scope of responsibilities and authorities of the FS as defined in the National Forest Management Act of 1976, as amended (16 U.S.C. 1610), such as recreation, wilderness, wildlife and fish, range, timber, land, water, and human and community development.

§ 660.105 Designation of forest highways.

(a) The Federal Highway Administration (FHWA), in consultation with the FS and cooperators, where appropriate, will designate forest highways from the forest roads which serve the NFS in each State.

(1) The State highway administration (SHA) will represent the State and county interest. All counties should send their proposals to the State.

(2) The SHA and the FS will be able to nominate roads for forest highway designation.

(b) A forest road designated as a forest highway for purposes of this subpart will meet the following criteria:

(1) It is under the jurisdiction of a cooperator and open to public travel.

(2) It provides a connection between an adequate and safe public road and the renewable resources of the NFS which are essential to the local, regional, or national economy, and/or the communities, shipping points, or markets which depend upon those renewable resources.

(3) It serves other local needs such as schools, mail delivery, commercial supply, and access to private property within the NFS, or serves traffic of which a preponderance is generated by use of the NFS and its resources, or serves NFS generated traffic volumes that have a substantial impact on roadway design and construction.

§ 660.107 Allocations.

On October 1 of each fiscal year, the FHWA will allocate funds for forest highways using values based on relative transportation needs of the various elements of the national forest system, after deducting such sums as deemed necessary for the administra-

tive requirements of the FHWA; necessary expenses of the FS; and necessary costs of forest highway planning studies.

[49 FR 40011, Oct. 12, 1984]

§ 660.109 Program and project selection.

(a) For each fiscal year that funds are apportioned for forest highways the FHWA will request that the SHA and the State highway agency (or agencies for all cooperators in the State) submit a list of projects proposed for financing with such funds, listed in order of priority.

(b) Following receipt of the lists of projects, the FHWA will conduct a joint conference with the FS and the SHA to resolve any disagreement to select the projects which will be included in the programs for the current fiscal year and at least the next two years. If there are no disagreements, the conference will not be required. Projects included in each year's program will be jointly selected upon the following criteria:

(1) The development, utilization, protection and administration of the NFS and its renewable resources.

(2) The enhancement of economic development at the local, regional, or national level.

(3) The continuity of the transportation network serving the NFS and dependent communities.

(4) The mobility of the users of the transportation network and the services provided.

(5) The improvement of the transportation network for economy of operation and maintenance and safety of its users.

(6) The protection and enhancement of the rural environment associated with the NFS and its renewable resources.

(c) The recommended program projects will be prepared by the FHWA and submitted to the FS and the SHA for concurrence. The FHWA will approve the program of projects. Following approval, the SHA shall advise any other cooperators in the State of the projects included in the final program. The SHA shall also determine the amount of State and local participation.

are required for the funding of project.

### **III Agreements.**

A forest highway agreement be entered into between the FHWA and each cooperator prior to expenditure of any funds by the FHWA in the State, county, or other jurisdiction involved. The forest highway agreement shall set forth the responsibilities of each party, including that of adherence to the provisions of Federal statutes and regulations.

A project agreement implementing a forest highway agreement be entered into between the FHWA and the cooperator involved in one or more of the following conditions:

1. A cooperator's funds are to be available to the FHWA for the project or any portion of the project.  
2. Federal funds are to be made available to a cooperator for any work.  
Special circumstances exist which make a project agreement necessary for payment purposes or to any aspect of the project.

### **3 Construction.**

Forest highway projects will be constructed or administered by the FHWA unless otherwise provided for in an agreement with the cooperator entered into under this subpart.

Projects to be constructed or administered by the FHWA will be developed in accordance with FHWA procedures including the appropriate environmental procedures in Subchapter H of this chapter and the Nationwide Forest Plan for the Direct Federal Administration. Projects to be constructed and administered by a cooperator shall be developed in accordance with Federal procedures including the appropriate environmental procedures in Subchapter H of this chapter.

No construction shall be undertaken on any forest highway project until plans, specifications and estimates have been concurred in by the FHWA and the FS and approved by the FHWA.

(d) Forest highway projects shall be designed in accordance with Part 625 of this chapter or those criteria specifically approved by the FHWA for a particular project.

(e) The construction of forest highways will be performed by the contract method, unless construction by the FHWA or a cooperator on its own account is warranted under 23 U.S.C. 204(c).

(f) Construction of any project shall not be accepted by the FHWA as completed until the project has been inspected and approved by the cooperator, the FS, and the FHWA.

### **§ 660.115 Maintenance.**

The cooperator having jurisdiction over a forest highway shall have the responsibility for maintaining it, unless otherwise provided for in an agreement approved under this subpart.

### **§ 660.117 Funding, records and accounting.**

(a) The Federal share of funding for eligible forest highway projects may be any amount up to and including 100 percent. A cooperator may participate in the cost of construction, but participation shall not be required.

(b) Forest highway funds shall be available for adjacent vehicular parking areas and for sanitary, water, and fire control facilities.

(c) Use of forest highway funds for right-of-way acquisition or maintenance shall be subject to specific approval by FHWA.

(d) Cooperators which administer construction of forest highway projects and the SHA's shall maintain their forest highway records according to the provisions of Part 17 of this chapter.

(e) Funds provided to the FHWA by a cooperator in advance of construction will be deposited in the Treasury of the United States to the credit of "Cooperative Work, Forest Highways, Federal Highway Administration."

**Subparts B—D [Reserved]**

**Subpart E—Defense Access Roads**

**AUTHORITY:** 23 U.S.C. 210, 315; 49 CFR 1.48(b).

**SOURCE:** 49 FR 21924, May 24, 1984, unless otherwise noted.

**§ 660.501 Purpose.**

The purpose of this regulation is to prescribe policies and procedures governing evaluations of defense access road needs, and administration of projects financed under the defense access roads and other defense related special highway programs.

**§ 660.503 Objectives.**

The defense access roads program provides a means by which the Federal Government may pay its fair share of the cost of:

(a) Highway improvements needed for adequate highway service to defense and defense related installations;

(b) New highways to replace those which must be closed to permit establishment or expansion of defense installations;

(c) Repair of damage to highways caused by major military maneuvers;

(d) Repair of damages due to the activities of contractors engaged in the construction of missile sites; and

(e) Missile routes to ensure their continued ability to support the missile transporter-erector (TE) vehicle.

**§ 660.505 Scope.**

This regulation focuses on procedures as they apply to the defense access roads and other special highway programs of the Department of Defense (DOD).

**§ 660.507 Definitions.**

(a) *Defense installation.* A military reservation or installation, or defense related industry or source of raw materials.

(b) *Military Traffic Management Command (MTMC).* The military transportation agency with responsibilities assigned by the Secretary of Defense for maintaining liaison with the Federal Highway Administration (FHWA) and other agencies for the in-

tegration of defense needs into the Nation's highway program.

(c) *Certification.* The statement of the Secretary of Transportation or other official as the President designate) that certain roads are important to the national defense.

(d) *Access road.* An existing or proposed public highway which is not to provide essential highway transportation services to a defense installation. (This definition may include public highways through military installations only when right-of-way for such roads is dedicated to public use and the roads are maintained by the military authority.)

(e) *Replacement road.* A public highway constructed to replace one closed or destroyed, or the establishment of a new, or the relocation of an old, defense installation.

(f) *Maneuver area road.* A public road in an area delineated by orders for field maneuvers or exercises of military forces.

(g) *Transporter-erector road.* A public road specifically designated for use by the TE vehicle for access to missile sites.

**§ 660.509 General principles.**

(a) State and local highway agencies are expected to assume the responsibility for developing and maintaining adequate highways to support present defense installations as well as for highways serving private industry, establishments or any other present traffic generators. The Federal Government expects that highway improvements in the vicinity of defense installations will receive due priority consideration and treatment as and local agencies develop their programs of improvement. The Federal Government will provide assistance, as requested by MTMC, to ascertain State plans for improvements to roads serving as access to defense installations. Roads which serve permanent defense installations and which qualify as established criteria as Federal-aid routes should be included in the appropriate Federal-aid system.

(b) It is recognized that problems may arise in connection with the establishment, expansion, or operation

defense installations which create unanticipated impact upon the range requirements for the development of highways in the vicinity. The problems can be resolved equitably only by Federal assistance from more than normal Federal-aid highway programs for part or all of the cost of highway improvements necessary for the functioning of the installations.

### **11 Eligibility.**

The MTMC has the responsibility of determining the eligibility of projects for improvements for financing defense access roads funds. The determination report will be furnished to the DOT for its use in making the determination of eligibility and certification important to the national defense. The criteria upon which MTMC will make its determination of eligibility are set forth in the Federal-Aid Highway Manual, Volume 6, Chapter 5, Attachment 2.<sup>1</sup> If the project is determined to be eligible for financing either in whole or in part with defense access road funds, MTMC will certify the project as important to the national defense and will authorize expenditure of defense access road funds. The Commander, MTMC, is the only representative of the DOD officially authorized to make the certification required by 40 U.S.C., title 23, U.S.C., in behalf of the Secretary of Defense.

### **3 Standards.**

Access roads to permanent defense installations and all replacement roads shall be designed to conform to the same standards as the agency having jurisdiction is currently using for comparable highways under similar conditions in the area. In general, where the agency having jurisdiction does not have established standards, the design shall conform to the standards of the Association of State Highway and Transportation Officials (ASHTO) standards. Should local agencies desire higher standards than

are currently being used for other comparable highways under similar conditions in the area, they shall finance the increases in cost.

(b) Access roads to temporary military establishments or for service to workers temporarily engaged in construction of defense installations should be designed to the minimum standards necessary to provide service for a limited period without intolerable congestion and hazard. As a guide, widening to more than two lanes generally will not be undertaken to accommodate anticipated one-way, peak-hour traffic of less than 1,200 vehicles per hour and resurfacing or strengthening of existing pavements will be held to the minimum type having the structural integrity to carry traffic for the short period of anticipated use.

### **§ 660.515 Project administration.**

(a) Determination of the agency best able to accomplish the location, design, and construction of the projects covered by this regulation will be made by the FHWA Division Administrator after consultation with the State and/or local highway agency within whose jurisdiction the highway lies. When an agency other than the State or local highway agency is selected to administer the project, the Division Administrator will be responsible during the life of the project for any necessary coordination between the selected agency and the State or local highway agency.

(b) Defense access road projects under the supervision of a State or local highway agency, whether on or off the Federal-aid system, shall be administered in accordance with Federal-aid procedures, as modified specifically herein or as limited by the delegations of authority to Regional and Division Administrators, unless approval of other procedures has been obtained from Washington Headquarters Office of Direct Federal Programs (HDF-1).

(c) The Division Administrator shall have a firm commitment from the State or local highway agency, within whose jurisdiction the access road lies, that it will accept the responsibility for maintenance of the completed fa-

<sup>1</sup> This document is available for inspection and copying from the FHWA headquarters field offices as prescribed by 49 CFR Part 1.10, Appendix D.

cility before authorization of acquisition of right-of-way or construction of a project.

(d) When defense access road funds are available for a pro-rata portion of the total project cost, the remaining portion of the project may be funded as a Federal-aid project if on a Federal-aid route. Defense access road funds shall not be substituted for the State's matching share of the Federal-aid portion of a project.

#### § 660.517 Maneuver area roads.

(a) Claims by a highway agency for costs incurred to restore, to their former condition, roads damaged by maneuvers involving a military force at least equal in strength to a ground division or an air wing will be paid from funds appropriated for the maneuver and transferred to FHWA by the DOD agency. Defense access road funds may be used to reimburse the highway authority pending transfer of funds by the DOD agency.

(b) Costs incurred by State or local highway authorities while conducting a pre- or post-condition survey may be included in the claim to DOD for direct settlement or in the damage repair project as appropriate.

#### § 660.519 Missile installations and facilities.

Should damage occur to public highways as a result of construction activities, the contractor would normally be held responsible for restoring the damages. However, should the contractor deny responsibility on the basis of contract terms, restoration is provided for under 23 U.S.C. 210(h).

(a) *Restoration under the contract.* (1) The highway agency having jurisdiction over the road shall take appropriate actions, such as load and speed restrictions, to protect the highway. When extensive damage is anticipated and the contractor under the terms of the contract is responsible, it may be necessary to require a performance bond to assure restoration.

(2) If the contractor does not properly maintain the roads when requested in writing, the highway agency having jurisdiction over the road shall perform extraordinary maintenance as necessary to keep the roads servicea-

ble and maintain adequate support records of the work performed. Claims shall be presented to the contractor for this extraordinary maintenance and any other work required to restore the roads. If the contractor denies responsibility on the basis of the contract terms, the claim with the required supporting documentation shall be presented to the contracting agency for disposition and arrangement for reimbursement.

(b) *Restoration under 23 U.S.C. 210(h).* (1) To implement 23 U.S.C. 210(h), DOD must make the determination that a contractor for a facility did not include in the bid the cost of repairing damage caused to public highways by the action of the contractor's vehicle equipment. The FHWA must make the determination that the State highway agency is, or has been unable to prevent such damage, and impose strictions upon the use of the roads without interference with delay in, the completion of the project. If these determinations are made, the Division Administrator shall be authorized by the Washington Headquarters to reimburse the highway agency for the cost of the necessary work to keep the roads in serviceable condition.

(2) Upon receipt of a damage claim, division office representatives accompanied by representatives of the contractor that made the original cost survey will inspect the roads on which damage is claimed. The Division Administrator shall then prepare a statement of the cost of restoring the roads to original condition as well as a documented cost for extraordinary maintenance for which reimbursement has not been received. No allowance for upgrading the roads shall be included.

### PART 661—GREAT RIVER ROAD

#### Sec.

- 661.1 Purpose.
- 661.2 Definitions.
- 661.3 Route designation.
- 661.4 Location criteria.
- 661.5 Project eligibility.
- 661.6 Design and construction.

SEC. 14, Pub. L. 83-350, 68 Stat. 70, May 6, 1954, 23 U.S.C. 148, 315; 49 CFR 1.48, unless otherwise noted.

41 FR 52449, Nov. 30, 1976, unless otherwise noted.

# **Purpose.**

This regulation outlines procedures to be followed in the funding, planning and execution of a program to develop the National Scenic and Recreational Highway in the Mississippi River Valley known as the Great River

## **Definitions.**

"Construction", as defined in 23 U.S.C. 101(a), and in addition means acquisition of areas of historical, archaeological, or scientific interest, easements for scenic purposes, and the construction or reconstruction of roadside rest areas (including appropriate recreational facilities, scenic viewing areas and other appropriate facilities as determined by the Secretary).

"Great River Road", a scenic and national highway, to be developed along the Mississippi River from Lake Superior in Minnesota to near Venice, Louisiana, and the Gulf of Mexico.

"Scenic and Recreational Highway", a highway generally within a corridor of parkway-like development having significant scenic, historical and recreational features.

## **Route designation.**

A single route for the Great River Road shall be designated for participation purposes. Except for significant breaks in continuity of route, result, it shall, to the extent possible, follow existing road alignments. It shall cross the Mississippi River on existing bridges.

The 10 Mississippi River States shall select, in cooperation with and subject to the approval of the Federal Highway Administration (FHWA), the location of the Great River Road system between designated existing Mississippi River crossings, which shall be coordinated with other State crossings, shall be coordinated with adjoining States. Each State is responsible for the following segments:

| State       | Segments                                                                                                  |
|-------------|-----------------------------------------------------------------------------------------------------------|
| Minnesota   | Lake Itasca to Point Douglas.                                                                             |
| Wisconsin   | Prescott to South of DeSoto opposite Lansing, Iowa.                                                       |
| Iowa        | Lansing to Dubuque and Muscatine to Ft. Madison.                                                          |
| Illinois    | East Dubuque to Muscatine, Niotra to Hannibal and Chester to Kentucky State line.                         |
| Missouri    | Hannibal to St. Marys.                                                                                    |
| Kentucky    | Illinois State line to Tennessee State line.                                                              |
| Tennessee   | Kentucky State line to Memphis.                                                                           |
| Arkansas    | West Memphis to Shives.                                                                                   |
| Mississippi | Greenville to Louisiana State line.                                                                       |
| Louisiana   | Mississippi State line to the Gulf of Mexico crossing from the east bank to the west bank at Baton Rouge. |

(c) The established Mississippi River crossings may be changed to other existing crossings and the Great River Road route modified accordingly when jointly agreed to by the States involved and approved by FHWA.

(d) Each State shall submit for FHWA approval the specific location of its segments of the Great River Road between designated control points. The FHWA will approve the location selected pursuant to the criteria set forth in this regulation. Access spurs may be included between the designated control points when access is not reasonably available over the existing Federal-aid highway network, to connect the Great River Road to significant scenic, historical, recreational or archeological features proximate to the Mississippi River or to existing bridges when these significant features are on the opposite side of the river.

(e) The States' selection and FHWA approval of a single scenic and recreation route location is provided for in this part for the purpose of establishing eligibility for the special category funds authorized under 23 U.S.C. 148. The States may continue to develop and sign the route on the alternative side of the river as the Great River Road Alternate which will not be eligible for Federal funds authorized under 23 U.S.C. 148.

(Sec. 125 of Pub. L. 95-599, 92 Stat. 2689; 23 U.S.C. 148, 315; 49 CFR 1.48(b))

[41 FR 52449, Nov. 30, 1976, as amended at 44 FR 11542, Mar. 1, 1979]

## § 661.4 Location criteria.

In establishing the specific location of the Great River Road, the following criteria shall be adhered to:

(a) The road shall originate at the headwaters of the Mississippi River at Lake Itasca in Minnesota, extend generally parallel and in proximity to the river, and terminate near the Gulf of Mexico in the vicinity of Venice, Louisiana.

(b) The road shall be located to take advantage of scenic river views and provide the user opportunities to stop and enjoy unique features and recreational activities.

(c) The road shall provide for a variety of experiences or themes, such as scenery, nature, history, geology and land use for scientific or cultural purposes.

(d) The road shall include, or allow for subsequent development, conveniently spaced roadside rest areas and other facilities so that the user may view and otherwise take advantage of the scenic, recreational and cultural areas of interest along the route.

(e) The road shall be located so that the unique values of the corridor may be protected. This may be accomplished by appropriate route selection, effective control or elimination of development inconsistent with the nature and performance of the highway through zoning or other land use restrictions, the acquisition of scenic easements and where necessary the direct acquisition of scenic, historic, woodland or other areas of interest in fee or by other appropriate measures.

(f) The road shall be located so as to provide for convenient access to:

(1) Larger population centers of the States through which the Great River Road passes,

(2) Other elements of the Federal-aid system, particularly the Interstate System.

(3) Sites of historical, archeological, scientific, scenic, or cultural interest in the areas through which the route passes, and

(4) Local services such as gas, food, and lodging and recreational facilities to a degree not inconsistent with the purposes of the route.

## § 661.5 Project eligibility.

(a) Projects for expenditures of Great River Road funds shall be located on roads on the approved Great River Road location or on appropriate access spurs as described in § 661.4. In addition, except for portions under Federal jurisdiction, the main Great River Road shall also be part of an appropriate Federal-aid system (U.S.C. 148(c)).

(b) Great River Road projects shall be implemented under normal Federal-aid project procedures unless otherwise provided herein or otherwise approved by the Administrator.

(c) Projects for utilization of Great River Road funds will be selected on the following basis, listed in order of declining priority, unless it is demonstrated to be impractical.

(1) Preliminary engineering, including environmental studies for selection of the selection of existing route segments including acquisition of easements and other areas of interest.

(2) Acquisition of scenic easements and areas of scenic, historical, archaeological, or scientific interest which are on existing route segments.

(3) Construction of rest areas, overlooks, bicycle trails and related access to areas of interest and enhancement on existing route segments.

(4) Preliminary engineering through the location stage for segments of the location, including environmental studies.

(5) Reconstruction and rehabilitation of the existing route segments.

(6) Construction of new route segments to establish route continuity.

(d) Great River Road funds shall be used to construct new Mississippi River crossing structures. Participation is limited to the same side of a river as the Great River Road.

(e) Where traffic service and highway safety warrants are more adequate to support the use of Federal-aid highway funds, the use of such funds should first be given serious consideration.

(f) No fees shall be charged for use of any facility constructed with Great River Road funds except for parks, recreational areas, and historical sites.

sites operated by State or local governments where admission fees are required to cover operational costs. The provisions of 23 U.S.C. 129(a) shall not apply to any bridge or tunnel on the Great River Road.

The Federal share of the cost of Great River Road funded projects on any of the approved route including the Federal-aid system under functional classification provisions of 23 U.S.C. 103 shall be as provided in 23 U.S.C. 120. The Federal share of the cost of projects not included on the Federal-aid system except to satisfy 23 U.S.C. 148(c) shall be 75 percent. The Federal share of the cost of projects on approved Great River Road facilities under Federal jurisdiction shall be 100 percent.

25 of Pub. L. 95-599, 92 Stat. 2689; 23 CFR 148.315; 49 CFR 1.48(b))  
52449, Nov. 30, 1976, as amended at 11542, Mar. 2, 1979]

#### Design and construction.

Except as indicated below, the Great River Road shall be designed and constructed by each of the 10 Mississippi River States in accordance with the Federal Highway Administration (FHWA) regulations and directives applicable to the appropriate system.

Roadway elements of the Great River Road which impact on the safety of traffic operations shall be designed using as a guide the standards, regulations, policies, and guides applicable to the design of Federal-aid roads. Great River Road funds may be used in preliminary engineering, right-of-way acquisition and physical construction, but participation in physical construction or reconstruction shall be limited to a roadway of two 12-foot lanes plus shoulders and a pro rata share of ancillary facilities which are consistent with any development if more than two lanes are to be constructed.

The other design elements of the facility should incorporate parkway features which will allow the motorist to maintain a leisurely pace and enjoy the scenic and recreational aspects of the route. Such features may include rest areas and overlooks with suitable facilities for bikeways and pedestrian walk-

(d) Outdoor advertising signs, displays and devices shall be effectively controlled pursuant to 23 U.S.C. 131 irrespective of the Federal system designation.

(e) Pursuant to 23 U.S.C. 148(a)(3), the Great River Road shall be signed with uniform identifying trail markers.

## PART 666—DEFENSE BRIDGES AND CRITICAL HIGHWAY FACILITIES REPORTS

### Sec.

666.1 Purpose.

666.3 General.

666.5 Information needed.

666.7 Defense highway network.

666.9 Structures off the Federal-aid system.

666.11 Structures less than 20 feet in length.

666.13 Ferries.

666.15 Bridge index map and mileage summary totals.

666.17 Method and frequency of reporting.

### APPENDIX A—INSTRUCTIONS FOR PREPARING THE BRIDGE INDEX MAP

### APPENDIX B—EXAMPLES OF PORTIONS OF BRIDGE INDEX MAP

**AUTHORITY:** 23 U.S.C. 210 and 315; 49 CFR 1.48(b); EO 11490, 34 FR 17567, 3 CFR 1966-1970 Comp.; EO 11921, 41 FR 24294.

**SOURCE:** 42 FR 49932, Sept. 28, 1977, unless otherwise noted.

#### § 666.1 Purpose.

To prescribe the procedures to be followed in the furnishing of supplemental bridge data and other information required to generate defense bridge and critical highway facilities reports.

#### § 666.3 General.

(a) In an effort to avoid duplication in reporting of bridge data by State highway departments and to relieve States of the responsibility for the generation, preparation, and distribution of a separate report concerning defense bridges and critical highway facilities, the FHWA has agreed to produce such reports biennially from the data base developed through the National Bridge Inspection Standards



(NBIS) inventory<sup>1</sup> and certain other information and bridge data provided in accordance with this regulation.

(b) In complying with this regulation, State Highway departments are encouraged to update and utilize those Bridge Index Maps developed and furnished as a part of former Defense Bridge Record submissions.

**§ 666.5 Information needed.**

To fulfill the reporting requirements of the FHWA, there is a need for submission of current data and information from each State on:

- (a) Routes included in the Defense Highway Network,
- (b) Structures off the Federal-aid System, but on one of the defense highway sections,
- (c) Structures less than 20 feet in length on a defense highway section, but with clearance or capacity limitations,
- (d) Ferries, and
- (e) Bridge Index Maps and mileage summary totals.

**§ 666.7 Defense highway network.**

(a) Each State highway department is to review its highway facilities and identify all routes that might reasonably be used for important defense shipments, movements of troops or military hardware and/or supplies, or for the evacuation of the general public from disaster areas. All routes identified for these purposes are to be incorporated into and will collectively form the Nation's Defense Highway Network. This network currently consists of about 250,000 miles of major highways.

(b) The defense highway network normally should include as a minimum the Interstate and the Federal-aid primary (FAP routes as realigned in accordance with the 1973 Federal-Aid Highway Act (Pub. L. 93-87, 87 Stat. 250). In special cases, however, the States may delete such routes that are considered unnecessary for national defense and for State emergency plans for natural disasters. While each State has the right to choose its own defense network, it should be prepared to explain why any routes are not in-

cluded that normally would be under the criteria identified herein.

(c) The defense highway network should provide connecting routes to important military installations, industries, and resources not served by the FAP routes. This would include the following:

- (1) Military buses, National Guard installations, supply depots, etc.;
- (2) Hospitals, medical supply depots, emergency depots, etc.;
- (3) Major Airports;
- (4) Defense industries plus those that could easily or logically be converted to such;
- (5) Refineries, fuel storage, and distribution centers;
- (6) Major railroad terminals, piers, docks, truck terminals;
- (7) Major power plants, including hydroelectric centers at major dams;
- (8) Major communications centers;
- (9) Transporter-Erector Routers;
- (10) Routes containing bridges, tunnels that have been identified as critical under the provisions of the Federal-Aid Highway Program Manual, Volume 6, Chapter 10, Section 1, section 1, "Protection of Critical Highway Facilities Against Sabotage and

(11) Other facilities that the State considers important from the point of national defense or in the event of emergencies.

(d) Following selection of the defense network, each State highway department is requested to illustrate and number the highways in accordance with instructions provided in appendix A of this part, "Instructions for Preparing the Bridge Index Map."

**§ 666.9 Structures off the Federal-aid system.**

Information is needed for all structures on each State's defense highway network. The data desired are in addition to the bridge data required by the NBIS program. Bridges on roads/routes on each State's defense network but off the Federal-aid system are to be inspected using

<sup>1</sup>The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR Part 7. Appendix A.

<sup>2</sup>23 CFR Part 650, Subpart C.

inventory, recording and coding structures used for the NBIS project. Structures to be reported are all those both free and toll that meet American Association of State Highway and Transportation Officials (AASHTO) definition of a bridge as in AASHTO "Highway Definition" Data on structures less than 100 feet in length should be included in accordance with guidance provided in 49 CFR Part 7, App. D of this part.

Structures less than 20 feet in height.

A requirement that data on all structures less than 20 feet in length have limitations in certain characteristics that may restrict defense routes be furnished for all routes whether or not part of the Federal Highway System on each State's defense highway network. The structures to be reported with critical limitations are

Where the width on the structure is appreciably less (one fourth of the roadway width) than the width of the approach roadway. Where the minimum vertical clearance for a selected path on the route (Item 10 "Inventory Route, Minimum Vertical Clearance," of the "Inventory, Recording and Coding Guide for Bridge Structure Inventory and Appraisal of the Nation's Bridges" is less than 18 feet, and

booklet entitled "Highway Definition" is available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 Capitol Street NW., Washington, D.C. 20001. It is incorporated by reference in 49 CFR 625.3(e). A copy may be examined during normal business hours at the Federal Highway Administration, the FHWA Division office in each State Highway Department, the FHWA Region offices, and at FHWA Headquarters located at 400 7th Street SW., Washington, D.C. 20590. The addresses of current inspection facilities are set forth in 49 CFR Part 7, App. D. See also 23 CFR Part 650, Subpart C for "bridge" definition.

Published by the U.S. Department of Transportation, Federal Highway Administration, July 1972, it is available for inspection copying as prescribed in 49 CFR Part 7, App. D.

(c) Where the structure is considered to be incapable of carrying a load equivalent to H 10.

#### § 666.13 Ferries.

Where the employment of ferries is necessary for route continuity on the Defense Highway Network, data concerning such ferries should be shown on the appropriate map near the location of the ferry. If that is not practical, the information may be shown in tabular form in an otherwise blank portion of the Bridge Index Map.

#### § 666.15 Bridge index maps and mileage summary totals.

Bridge Index Maps are to be prepared in accordance with Appendix A of this part. Mileage summary totals for defense routes selected for study should be classified and shown in some otherwise unused space of the Bridge Index Map by the systems listed below:

- (a) Interstate traveled-way:
  - (1) Free,
  - (2) Toll,
- (b) Other Federal-aid primary routes:
  - (1) On the State primary system,
  - (2) Off the state primary system,
- (c) Other routes:
  - (1) On the State primary system,
  - (2) Off the State primary system,
- (d) Total, all routes reported.

#### § 666.17 Method and frequency of reporting.

(a) Data requested for all structures on the Defense Highway Network are to be incorporated into the NBIS data and reported simultaneously with the State's NBIS report beginning December 1977 (OMB Clearance No. 04-R2441). The NBIS data submissions shall be made every two years and more frequently upon request.

(b) To the extent possible, each State should also coordinate the time for its submission of Bridge Index Map(s), illustrating its defense highway network, data on ferries and mileage summary totals with each NBIS inventory. Bridge Index Maps with information on ferries and mileage summary totals are to be submitted every two years beginning in November 1977

through appropriate FHWA field offices to FHWA Headquarters, Attention: HHO-40.

(c) Coordination at State level will be necessary if an office different from one providing NBIS data is assigned responsibility for the information required herein.

(d) In the event metrication is mandated and changes are made to the NBIS inventory and the "Recording and Coding Guide for Structure Inventory and Appraisal of the Nation's Bridges," the metric system will be utilized and this publication revised in accordance with FHWA guidance.

#### APPENDIX A—INSTRUCTIONS FOR PREPARING THE BRIDGE INDEX MAP

1. A State map showing the routes and/or connecting roads to be included in the Defense Highway Network will be used to indicate the road sections on which the various structures are located. For uniformity in designation, this will be known as the Bridge Index Map. The State general highway map with enlarged scale insets or supplemental sheets for urban and other congested areas might serve the purpose in some cases; however, this may result in a congested map unless modified to clearly identify the routes selected for the study. It generally will be preferable to prepare a skeletonized map showing only the routes covered by the data, using single lines, county names with boundaries, important places, necessary ferries, and physical features. The map should be of a quality and type such that additional copies can be made from a single submission and should be complete for the purposes intended.

2. The Interstate System should be indicated on the map. The Interstate route number and the signed U.S. and State route numbers should be shown for purposes of road identification. The primary control for the bridge record, however, will be the section numbers. A defense highway section is defined by the intersection of that highway with each of the other roads that also have been selected as defense highways. These intersections may be either at grade or at an interchange. There are exceptions to this. However, per the instructions in the NBIS Recording and Coding Guide, a section cannot exceed 99.9 miles in length. Where two defense highways do not intersect within a 99.9 mile distance, the section must be divided into two or more sections by using as breakpoints intersections with other highways that are significant but that are not defense highways or by using other identifiable features such as rivers, county

lines, etc. These features must be shown on the index map. A second exception is in Paragraph 5 of this Appendix.

3. The numbering should start with the designated defense highway that begins the most northwesterly part of the corridor and that is generally in a west to east direction. There may be situations where more different routes (routes with different numerical identifications) form a corridor west to east across the State. In these situations, the numbering should follow the corridor. The rule of thumb is that the key to the numbering is routing, not route numbers. In order to provide for expansion, that is, allow new sections to be added without causing existing sections to be renumbered, the section numbers should be incremented by 5, with the first section numbered "5." The numbers should continue in this incremental sequence along the length of the corridor to the east. Again, where several corridors form a corridor across the State, the numbers should be incremented at the entire length of the corridor, rather than just a single route. The next westerly corridor of routes south of the first would be numbered, beginning with the next highest incremental number, continuing the sequence or order of numbers. The numbers should continue until all west to east corridors of routes are numbered, beginning with the south to north in the westerly part of the State and continuing with the next highest incremental number, the route or corridor of routes numbered with the numbers ascending in the northerly direction. The next south to north route or corridor to the east of the first one should be numbered next, beginning with the next highest incremental number. No two sections of road in the State should be assigned the same number, nor should any section be assigned more than one number.

4. There will be some overlaps in section numbering. When a route being numbered coincides for a distance with one previously numbered, the lower section number previously assigned will apply to the coincident sections. The higher numbering will be continued at the beginning of the new section and continued again when the two sections are separate. Thus, for example, the section of a route being considered might be numbered: 325-335, 25-35, 340-355, the 25-35 being on sections which are coincident with a part of a route previously numbered.

5. The section number ordinarily should be placed beside the road section but, in congested areas, may be placed at some distance away with an arrow drawn to the section to which it applies. These should be readily distinguishable from any other

on the map, such as State route number. It is important that all sections be noted on the Bridge Index Map. ordinarily will require the use of insets to show the detail that is necessary to facilitate understanding of the report in the of interchanges. Within interchanges, ramp or turning roadway should be reported as a separate section (although it may be necessary to have a record or line report for ramps that do not have a section that either carry the ramp or go on, making every attempt to maintain continuity of numbering with respect to the section. This means that the ramps will be reported according to the mainline routes which they diverge, by adding a letter beginning with the first ramp entered in the direction of inventory and continuing with each ramp in a counter-clockwise direction. An interchange numbered section, for example, may include several ramps, whether either over or carrying the mainline. These ramps would become sections 120B, 120C, etc. The insets show, in addition to the section numbers, the direction of traffic movement. Examples of a section of a Bridge Index Map and several examples are shown in Appendix B of this part. The examples show two alternate methods of section numbering. The first is to treat the interchange area as a separate section. This is another exception to the criteria for establishing sections that are discussed in Paragraph 2 of this Appendix. The second alternative is to include the interchange area with either the preceding or the succeeding sections, preferably the preceding one. Whichever is used should be used throughout the report to be consistent.

6. The road sections will be used to indicate between which road intersections each bridge is located. The Bridge Index Map need not show the location of each bridge.

7. Inconsistencies at statelines should be avoided. These fall into two categories:

(a) A highway which crosses a stateline is selected by one State for inclusion in the Bridge Record, but is not selected by the adjoining State.

(b) A structure located at a stateline is not reported by either State for inclusion in the Bridge Record, or is reported by both States but with differences. The differences may involve span length, vertical clearance, or other reported data.

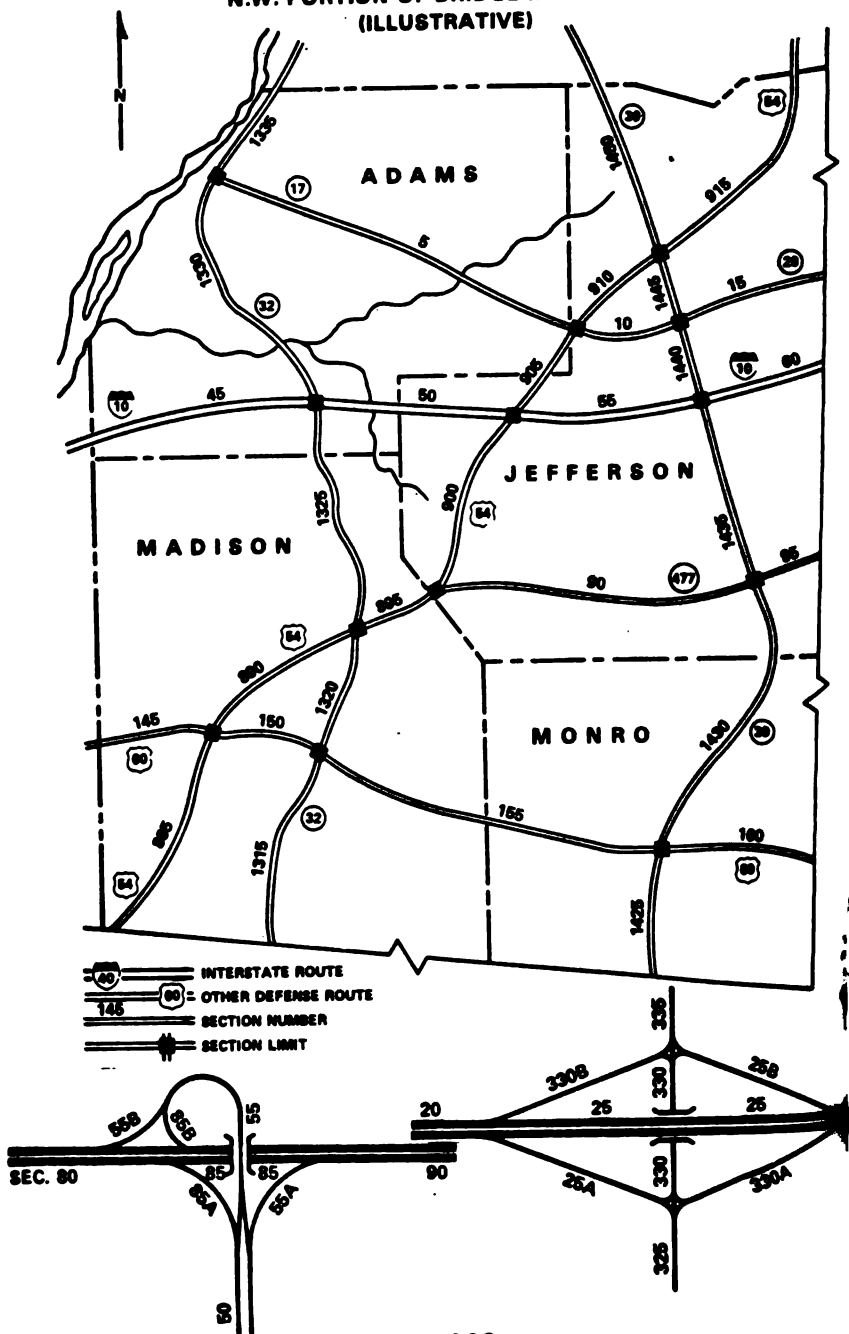
8. Those in the first category should be resolved by means of an exchange of maps by highway departments in adjoining States, followed by addition or deletion of routes as may be most appropriate. For those in the second category, each State should report on those structures for which the highway department or other agency within that State has maintenance responsibility. For the unusual case not covered by this rule, an agreement should be reached between the two States involved as to which State should have reporting responsibilities.

9. Ferries necessary for through route continuity should be identified and shown at their location on skeletonized maps. Ferry carrying capacity and limiting clearances may be shown near the ferry location or tabulated and keyed to route and location.

10. Defense Highway Network mileage summary totals classified in accordance with guidance provided in § 666.15 are to be shown in some otherwise unused space of the Bridge Index Map.

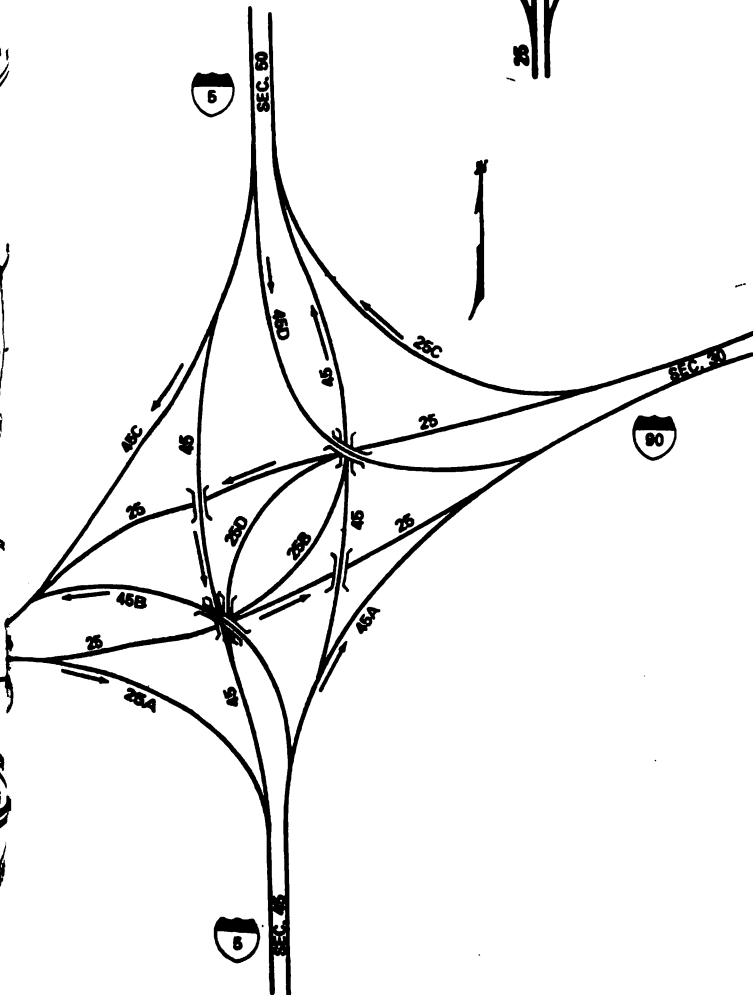
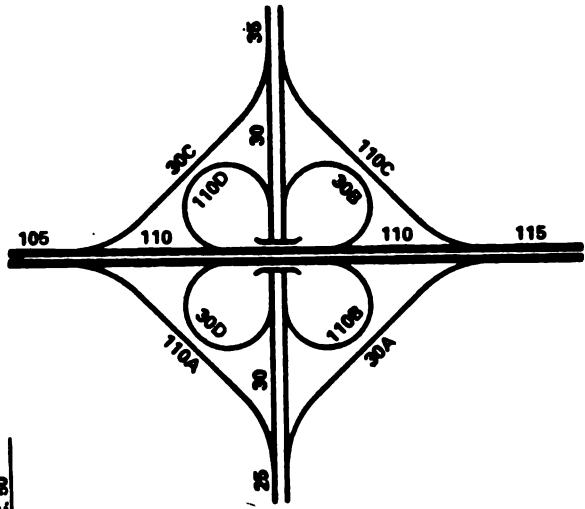
# APPENDIX B EXAMPLES OF PORTIONS OF BRIDGE INDEX MAP

## N.W. PORTION OF BRIDGE INDEX MAP (ILLUSTRATIVE)



E INDEX IN

MAP



# **PART 667—PUBLIC LANDS HIGHWAYS FUNDS**

Sec.

667.1 Purpose.

667.3 Allocation of funds.

667.5 Project procedures.

667.7 Eligibility.

**AUTHORITY:** 23 U.S.C. 202(c), 204 and 315; and 49 CFR 1.48(b).

**SOURCE:** 50 FR 10756, Mar. 18, 1985, unless otherwise noted.

**EFFECTIVE DATE NOTE:** At 50 FR 10756, Mar. 18, 1985, Part 667 was revised, effective April 17, 1985. For the convenience of the user, the text remaining in effect until April 17, 1985 follows the text of this new part.

## **§ 667.1 Purpose.**

The purpose of this regulation is to outline procedures to be followed in administering Public Lands Highways funds.

## **§ 667.3 Allocation of funds.**

(a) Funds authorized for Public Lands Highways shall be allocated among the States on the basis of need as determined by the Federal Highway Administrator upon application of the State highway agency (SHA). Preference will be given to those projects which significantly benefit or improve Federal land and resource management and similar consideration will be given regardless of the type of Federal lands involved.

(b) Annually a call will be issued by the Federal Highway Administration (FHWA) to the respective SHA's for candidate projects. The SHA's may identify and prioritize candidate projects in consultation with FHWA and other Federal agencies as appropriate.

(c) All candidate projects submitted in response to the above call will be reviewed by FHWA Washington Headquarters and a priority of need determined on the basis of supporting information submitted with the application dealing with the following considerations:

(1) Relationship to Federal land and resource management plans and activities including traffic carrying capacity and other effects on land use and resource development,

(2) Current status and adequacy of the present road with regard to its continuity, capacity, safety and State and Federal agency transportation plans,

(3) Relationship of proposed improvement to the adequate development of a complete highway section and

(4) Schedule for physical construction, particularly, how soon physical construction will begin.

(d) After reviewing the application based on the above criteria, FHWA will also give some consideration to the equitable distribution of States of available funds.

## **§ 667.5 Project procedures.**

(a) Except as noted herein, work to be administered by the SHA in accordance with Federal-aid procedures applicable to Federal-aid projects or by the FHWA in accordance with procedures applicable to forest highway projects. The method chosen will be determined by agreement between the SHA and FHWA Division Administrator.

(b) The Administrator's approval of a specific project constitutes project approval. There is no need for subsequent inclusion in the statewide program of projects.

(c) Upon receipt of advice of project approval, the project should be advanced expeditiously. Projects shall be constructed through contracts awarded by competitive bidding unless FHWA Division Administrator or Direct Federal Division Engineer finds that another method is cost effective for a particular project.

(d) The amount of Public Lands Highways funds available for the construction of a specific project is limited to the amount of funds allotted to that project. No fund transfers or changes to project termini or descriptions as approved by the Administrator will be permitted without prior approval from the Washington Headquarters.

## **§ 667.7 Eligibility.**

(a) Funds authorized for Public Lands Highways are available for public roads on the Federal-aid system.

are entirely within Federal

Funds may be used for engineer- and construction of the mainline way including adjacent vehicular parking areas and construction elements related to scenic easements.

Funds may not be used for right-of-way costs, maintenance or other activities such as sanitary, water and control facilities.

**ACTIVE DATE NOTE:** At 50 FR 10756, July 18, 1985, Part 667 was revised, effective July 17, 1985. For the convenience of the reader, the text remaining in effect until April 1985 reads as follows:

#### 1667—PUBLIC LANDS HIGHWAYS FUNDS

##### Purpose.

##### Allocation of funds.

##### Project procedures.

##### Eligibility.

**AUTHORITY:** 23 U.S.C. 209, 315; 49 CFR

44 FR 40065, July 9, 1979, unless otherwise noted.

##### Purpose.

The purpose of this regulation is to outline procedures to be followed in administering public lands highways funds.

##### Allocation of funds.

Funds authorized for public lands highways shall be allocated among the States on the basis of need as determined by the Federal Highway Administrator upon recommendation of the State highway agency.

Periodically a call will be issued by the Federal Highway Administration (FHWA) to the respective SHA's for candidate projects.

All candidate projects submitted in response to the above call will be reviewed by FHWA and a priority of need determined on the basis of supporting information submitted with the application dealing with the following considerations:

Current status and adequacy of the existing road with regard to capacity and

Relationship of proposed improvement to adequate development of a complete highway section.

Service needs of Federal agency with jurisdiction over abutting Federal lands.

Needs of FHWA direct Federal forces to perform work.

Equitable distribution of available funds, and

(6) How soon physical construction will begin.

#### § 667.5 Project procedures.

(a) The Administrator's approval of a specific project constitutes program approval, thereby obviating the need for subsequent inclusion in the statewide program of projects. With approval, funds will be allotted to the Regional Administrator for each specific project.

(b) Upon receipt of advice of project approval, the project should be advanced expeditiously. Except for programming as covered above, projects may be constructed by the SHA in accordance with Federal-aid procedures applicable to regular Federal-aid primary projects, or by FHWA in accordance with the procedures applicable to forest highway projects. The method chosen will be determined by agreement between the SHA and FHWA Division Administrator.

(c) The amount of public lands highways funds available for the construction of a specific project is limited to the amount of funds allotted for that project.

#### § 667.7 Eligibility.

Funds authorized for public lands highways are available for:

(a) Construction, excluding acquisition of rights-of-way;

(b) Construction of adjacent vehicular parking areas and sanitary, water and fire control facilities; and

(c) Maintenance.

## PART 668—EMERGENCY RELIEF PROGRAM

### Subpart A—Procedures for Federal-Aid Highways

#### Sec.

668.101 Purpose.

668.103 Definitions.

668.105 Policy.

668.107 Federal share payable.

668.109 Eligibility.

668.111 Application procedures.

668.113 Program procedures.

### Subpart B—Procedures for Federal Agencies for Federal Roads

668.201 Purpose.

668.203 Definitions.

668.205 Policy.

668.207 Federal share payable from emergency fund.

668.209 Eligibility of work.

668.211 Notification, damage assessment, and finding.

668.213 Application procedures.



Sec.

668.215 Programing and project procedures.

### Subpart A—Procedures for Federal-Aid Highways

**AUTHORITY:** 23 U.S.C. 101, 120(f), 125, and 315; 42 U.S.C. 5155; 49 CFR 1.48(b).

**SOURCE:** 43 FR 59483, Dec. 21, 1978, unless otherwise noted.

#### § 668.101 Purpose.

This regulation establishes policy and provides program guidance for the administration of emergency funds for the repair or reconstruction of Federal-aid highways, which are found to have suffered serious damage by natural disasters over a wide area or catastrophic failures. Guidance for application by Federal agencies for reconstruction of Federal roads is contained in 23 CFR Part 668, Subpart B.

#### § 668.103 Definitions.

In addition to those contained in 23 U.S.C. 101(a), the following definitions shall apply as used in this regulation:

(a) *"Applicant"*. The State highway agency is the applicant for Federal assistance under 23 U.S.C. 125 for State highways and local roads and streets which are a part of the Federal-aid highway system.

(b) *"Catastrophic failure"*. The sudden failure of a major element or segment of the highway system which is not primarily attributable to gradual and progressive deterioration or lack of proper maintenance. The closure of a facility because of imminent danger of collapse is not in itself a sudden failure.

(c) *"Emergency repairs"*. Those repairs including temporary traffic operations undertaken during or immediately following the disaster occurrence for the purpose of:

- (1) Minimizing the extent of the damage;
- (2) Protecting remaining facilities; or
- (3) Restoring essential travel.

(d) *"Federal roads"*. Forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads.

(e) *"Natural disaster"*. An unusual natural occurrence, such as a flood, hurricane, severe storm, tidal wave, earthquake, or landslide which causes serious damage.

(f) *"Proclamation"*. A declaration of emergency by the Governor of the affected State.

#### § 668.105 Policy.

(a) The emergency relief program is intended to aid States and their political subdivisions to pay unusual heavy expenses resulting from a natural disaster over a wide area or catastrophic failure. Emergency funds are not intended to supplant other funds for correction of preexisting, nonemergency related deficiencies. The expenditures of these funds for emergency repair shall be in such a manner as to reduce, to the largest extent possible, the cost of permanent restoration work.

(b) The availability of emergency funds to repair or restore damaged highways resulting from a natural disaster shall be based on the condition of the extraordinary character of the natural disturbance and the area of impact. Storms of unusual intensity occurring over a small area do not meet the above conditions.

(c) Diligent efforts shall be made to recover repair costs from the responsible parties to reduce project costs where catastrophic damages are caused by ships, barge, highway vehicles, vehicles with heavy loads, and similar improperly controlled objects or events.

(d) Emergency funds shall not be used to provide assistance under another Federal program or compensation from any source. Partial compensation for a loss by other sources will not preclude emergency fund assistance for the part of such loss not compensated otherwise.

(e) The processing of emergency relief requests shall be given priority attention and shall be given priority over nonemergency work.

(f) Emergency relief projects shall be promptly constructed. Any project that has not advanced to the construction obligation stage by the end of the second fiscal year following the

in which the disaster occurred will not be advanced unless suitable justification to warrant retention is furnished to the Federal Highway Administration (FHWA).

(g) Permanent repair and reconstruction work shall be done by the contract method where feasible. It is in the public interest to perform emergency repairs either by force account or by the contract method.

#### § 668.107 Federal share payable.

(a) The Federal share payable for repair or reconstruction of Federal roads is 100 percent of the cost.

(b) The Federal share payable for repair or reconstruction of highways in the Federal-aid system, including the Interstate System, shall ordinarily not exceed 75 percent of the cost thereof, or the appropriate sliding scale rate in Clause (A) of 23 U.S.C. 316(a) for Public Lands States. When special circumstances warrant, the Federal Highway Administrator may determine it to be in the public interest to increase the Federal share. When the highway agency requests for an increase over the normal pro rata share, it must include information to demonstrate the inability of the State and local political units to bear the actual non-Federal share of highway repairs. A determination of public interest will be based largely on the amount expended by the State and local agencies to meet the total emergency.

#### § 668.109 Eligibility.

(a) The eligibility of all work is contingent upon approval by the Federal Highway Administrator of an application for emergency funds and inclusion of the work in an approved program of projects.

1) Prior FHWA approval or authorization is not required for emergency repairs and preliminary engineering (E).

2) Permanent repairs or restoration must have prior FHWA program approval and authorization, unless done as part of the emergency repairs.

(b) Emergency funds may participate in:

1) Repair to or reconstruction of seriously damaged highway elements within the right-of-way (ROW) limits,

including necessary clearance of debris and other deposits in drainage courses.

(2) Restoration of stream channels outside the highway ROW when:

(i) The public highway agency has responsibility for the maintenance and proper operation of the stream channel section; and

(ii) The work is necessary for satisfactory operation of the highway system involved.

(3) Actual PE and construction engineering costs on approved projects.

(4) Emergency repairs.

(5) Temporary operations, including emergency traffic services such as flagging traffic through inundated sections of highways, undertaken by the applicant during or immediately following the disaster.

(6) Betterments, such as relocation, replacement, upgrading or other added features not existing prior to the disaster, only where clearly economically justified to prevent future recurring damage. Economic justification must weigh the cost of the betterment against the risk of eligible recurring damage and the cost of future repair.

(c) Replacement highway facilities are appropriate when it is not technically and economically feasible to repair or restore a damaged element to its predisaster condition and are limited in emergency relief reimbursement to the cost of a new facility to current design standards of comparable capacity and character to the destroyed facility. With respect to a bridge, a comparable facility is one which meets current geometric and construction standards for the type and volume of traffic it will carry during its design life.

(d) Emergency funds may participate to the extent of eligible repair costs when proposed projects contain betterments or other work not eligible for emergency funds.

#### § 668.111 Application procedures.

(a) *Notification.* As soon as possible after occurrence of the disaster, the applicant shall notify the FHWA Division Administrator of its plans to apply for emergency funds. The notification may be either a tentative notice

of intent to apply for an application for emergency funds.

(b) *Application.* Before funds can be made available, an application for emergency relief must be made to, and approved by, FHWA. Applications shall be submitted to the FHWA Division Administrator. The application shall include:

(1) A copy of the Governor's proclamation or request for a Presidential proclamation (neither is required where Federal roads only are involved).

(2) Information on the natural disaster or catastrophic failure including a description of:

(i) The affected area;

(ii) Types of damage to highways for which assistance is requested; and

(iii) Preliminary estimate of the total cost of repairs.

(3) When appropriate, the State's request for an increase in the Federal share of funding of eligible costs with the supporting data as provided in paragraph (b) of § 668.107.

(c) *Approval of application.* The Federal Highway Administrator's finding of eligibility under 23 U.S.C. 125 shall constitute approval of the application.

#### § 668.113 Program procedures.

(a) Immediately after approval of an application, the FHWA Division Administrator will notify the applicant to proceed with preparation of a program of projects. The program should be submitted to the FHWA Division Administrator within 3 months of receipt of this notification. Program data should be kept to a minimum, but sufficient to identify the approved disaster or catastrophe and to permit a determination of the eligibility and propriety of proposed work.

(b) *Project procedures.* (1) Projects shall be processed in accordance with regular Federal-aid procedures except as modified herein or approved Certification Acceptance procedures where applicable.

(2) Simplified procedures, including abbreviated plans should be used where appropriate.

(3) The FHWA may approve a waiver of the advertising requirement if:

(i) Such procedures are authorized by State or local law; and

(ii) Bids are solicited from a reasonable number of contractors or material supply companies.

#### Subpart B—Procedures for Federal Agencies for Federal Roads

**AUTHORITY:** 23 U.S.C. 120(f), 125, and 312; 41 U.S.C. 252; 42 U.S.C. 5155; 49 CFR 1.48(b).

**SOURCE:** 43 FR 59485, Dec. 21, 1978, unless otherwise noted.

#### § 668.201 Purpose.

To establish policy, procedures, and program guidance for the administration of emergency relief to Federal agencies for the repair or reconstruction of Federal roads which are found to have suffered serious damage by natural disaster over a wide area or by catastrophic failure.

#### § 668.203 Definitions.

(a) "Applicant". Any Federal agency which submits an application for emergency relief and which has authority to repair or reconstruct Federal roads.

(b) "Betterments". Added protective features, such as, the relocation or rebuilding of roadways at a higher elevation or the extension, replacement or raising of bridges, and added facilities not existing prior to the natural disaster or catastrophic failure such as additional lanes, upgraded surfacing, structures.

(c) "Catastrophic failure". The sudden failure of a major element or segment of a Federal road which is not primarily attributable to gradual and progressive deterioration or lack of proper maintenance. The closure of a facility because of imminent danger of collapse is not in itself a sudden failure.

(d) "Emergency repairs". Those repairs, including necessary preliminary engineering (PE), construction engineering (CE), and temporary traffic operations, undertaken during or immediately after a natural disaster or catastrophic failure (1) to restore essential travel, (2) to protect remaining

facilities, or (3) to minimize the extent of damage.

(e) "Federal roads". Forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads as defined under 23 U.S.C. 101(a).

(f) "Finding". A letter or other official correspondence issued by the District Federal Division Engineer (DFDE) to a Federal agency giving notification that pursuant to 23 U.S.C. 15, Federal roads have (Affirmative Finding) or have not (Negative Finding) been found to have suffered serious damage as the result of (1) a natural disaster over a wide area, or (2) a catastrophic failure.

(g) "Natural disaster". An unusual natural occurrence such as a flood, hurricane, severe storm, tidal wave, earthquake, or landslide which causes serious damage.

(h) "Permanent work". Repair or reconstruction to pre-disaster or other lowered geometric and construction standards and related PE and CE.

(i) "Direct Federal Division Engineer." Director of one of the District field offices located in Vancouver, Washington; Denver, Colorado; and Arlington, Virginia.

[43 FR 59485, Dec. 21, 1978, as amended at 47 FR 10529, Mar. 11, 1982]

#### § 668.205 Policy.

(a) This emergency relief program is intended to pay the unusually heavy expenses in the repair and reconstruction of Federal roads resulting from damage caused by natural disasters over a wide area or catastrophic failures.

(b) Emergency relief work shall be given prompt attention and priority over non-emergency work.

(c) Permanent work shall be done by contract awarded by competitive bidding through formal advertising, where feasible.

(d) It is in the public interest to perform emergency repairs immediately and prior approval or authorization from the DFDE is not required. Emergency repairs may be performed by the method of contracting (advertised contract, negotiated contract, or force

account) which the applicant or the Federal Highway Administration (FHWA) (where FHWA performs the work) determines to be most suited for this work.

(e) Emergency relief projects shall be promptly constructed. Projects not under construction by the end of the second fiscal year following the year in which the disaster occurred will be reevaluated by the DFDE and will be withdrawn from the approved program of projects unless suitable justification is provided by the applicant to warrant retention.

(f) The Finding for natural disasters will be based on both the extraordinary character of the natural disturbance and the wide area of impact. Storms of unusual intensity occurring over a small area do not meet these conditions.

(g) Diligent efforts shall be made to recover repair costs from the legally responsible parties to reduce the project costs where highway damages are caused by ships, barge tows, highway vehicles, vehicles with illegal loads, and similar improperly controlled objects or events.

(h) Emergency funds shall not duplicate assistance under another Federal program or compensation from insurance or any other source. Where other funding compensates for only part of an eligible cost, emergency relief funding can be used to pay the remaining costs.

[43 FR 59485, Dec. 21, 1978, as amended at 47 FR 10529, Mar. 11, 1982]

#### § 668.207 Federal share payable from emergency fund.

The Federal share payable under this program is 100 percent of the cost.

#### § 668.209 Eligibility of work.

(a) Permanent work must have prior program approval in accordance with paragraph (a) of § 668.215 unless such work is performed as emergency repairs.

(b) Emergency repairs, including permanent work performed incidental to emergency repairs, and all PE may begin immediately and do not need prior program approval. Reimburse-

ment shall be contingent upon the work ultimately being approved in accordance with the requirements of paragraph (a) of § 668.215.

(c) To qualify for emergency relief, the damaged or destroyed road or trail shall be designated as a Federal road.

(d) Replacement highway facilities are appropriate when it is not practical and economically feasible to repair or restore a damaged element to its preexisting condition. Emergency relief is limited to the cost of a new facility constructed to current design standards of comparable capacity and character to the destroyed facility. With respect to a bridge, a comparable facility is one which meets current geometric and construction standards for the type and volume of traffic it will carry during its design life.

(e) Emergency relief funds may participate to the extent of eligible repair costs when proposed projects contain betterments or other work not eligible for emergency funds.

(f) Work may include:

(1) Repair to, or reconstruction of, seriously damaged highway elements for a distance which would be within normal highway right-of-way limits, including necessary clearance of debris and other deposits in drainage courses, where such work would not be classed as heavy maintenance.

(2) Restoration of stream channels when the work is necessary for the satisfactory operation of the federal road. The applicant must have responsibility and authority for maintenance and proper operation of stream channels restored.

(3) Betterments where clearly economically justified to prevent future recurring damage. Economic justification acceptable to the DFDE must weigh the cost of such betterments against the risk of eligible recurring damage and the cost of future repair.

(4) Actual PE and CE costs on approved projects.

(5) Emergency repairs.

[43 FR 59485, Dec. 21, 1978, as amended at 47 FR 10529, Mar. 11, 1982]

#### § 668.211 Notification, damage assessment, and finding.

(a) *Notification.* During or as soon as possible after a natural disaster or

catastrophic failure, each applicant will notify the DFDE of its tentative intent to apply for emergency relief and request that a Finding be made.

(b) *Acknowledgment.* The DFDE will promptly acknowledge the notification and briefly describe subsequent damage assessment, Finding, and application procedures.

(c) *Field report.* The applicant shall cooperate with the DFDE to promptly make a field survey of overall damage and in the preparation of a field report.

(d) *Finding.* Using the field report and other information deemed appropriate, the DFDE will promptly issue a Finding and if an Affirmative Finding is made, establish the date after which repair or reconstruction will be considered for emergency relief, and note the dates of the extraordinary natural occurrence or catastrophic event responsible for the damage or destruction.

(e) *Detailed site inspections.* (1) When an Affirmative Finding is made, the applicant shall cooperate with the DFDE to make a detailed inspection of each damage site.

(2) If it appears certain an Affirmative Finding will be made, the DFDE may elect to make these site inspections at the time damage is initially assessed pursuant to paragraph (c) of this section.

(f) The applicant shall make available to FHWA personnel conduct damage survey and estimate work maps depicting designated Federal roads in the affected area.

[43 FR 59485, Dec. 21, 1978, as amended at 47 FR 10529, Mar. 11, 1982]

#### § 668.213 Application procedures.

(a) Based on the detailed site inspections and damage estimates prepared pursuant to paragraph (e) of § 668.211, the applicant will submit an application in the form of a letter to the DFDE which shall include a list of projects for which emergency relief is requested. The application shall be submitted within 3 months after an Affirmative Finding.

(b) The list of projects shall include emergency repairs, PE, and permanent work, and provide for each project a

location, length, project number, type of damage, description of work with a separate breakdown for betterments including a justification for those intended for emergency relief funding, proposed method of construction, estimated cost, and any other information requested by the DFDE.

(c) If the initial list of projects is incomplete, a subsequent list(s) of projects shall be forwarded to the DFDE for approval consideration as soon as possible.

[43 FR 59485, Dec. 21, 1978, as amended at 47 FR 10529, Mar. 11, 1982]

#### **§ 668.215 Programing and project procedures.**

(a) The DFDE will advise the applicant in writing which projects in the application, or in any subsequent submittals pursuant to paragraph (c) of

§ 668.213 are approved including any approval conditions. Approved projects shall constitute the approved program of projects (program).

(b) Plans, specifications, and estimates (PS&E) shall be developed based on work identified in the approved program.

(c) The DFDE will approve PS&E's, concur in the award of contracts or the rejection of bids, determine that construction by the force account method is in the public interest, and accept completed work in accordance with interagency procedures established by the DFDE.

(d) The applicant shall notify the DFDE in writing of the semi-annual status and completion of each emergency relief project constructed by applicant forces.

[43 FR 59485, Dec. 21, 1978, as amended at 47 FR 10529, Mar. 11, 1982]

## SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

### PART 710—RIGHT-OF-WAY—GENERAL

#### Subpart A—General Policy and Definitions

##### Sec.

- 710.101 Purpose.
- 710.102 Applicability.
- 710.103 Policy.
- 710.104 Definitions.

#### Subpart B—State Highway Department Responsibilities

- 710.201 Purpose.
- 710.202 Applicability.
- 710.203 General responsibilities.
- 710.204 Title III assurances.
- 710.205 Right-of-way manuals.

#### Subpart C—Reimbursement Provisions

- 710.301 Purpose.
- 710.302 Applicability.
- 710.303 Reimbursement requirements and limitations.
- 710.304 Reimbursement policy.
- 710.305 Support for claims.
- 710.306 Withholding Federal participation.

#### Subpart D—Civil Rights

- 710.401 Purpose.
- 710.402 Applicability.
- 710.403 Definitions.
- 710.404 Policies.
- 710.405 Regulations.

**AUTHORITY:** 23 U.S.C. 315, 42 U.S.C. 4601 et seq., 49 CFR Part 25, 23 CFR 1.4, 23 CFR 1.32, (42 U.S.C. 2000d et seq.), Executive Orders 11246, 11247, and 11375, 49 CFR Part 21.

**SOURCE:** 39 FR 28416, July 19, 1974, unless otherwise noted.

#### Subpart A—General Policy and Definitions

##### § 710.101 Purpose.

(a) To prescribe the general policy of the Federal Highway Administration (FHWA) pertinent to the acquisition of real property for highway and related purposes.

(b) To define some fundamental terms used in FHWA right-of-way acquisition directives.

##### § 710.102 Applicability.

The provisions of this subpart are applicable to all States and political subdivisions thereof in the acquisition of real property for any highway or highway related project in which Federal funds will participate in any part of the cost of the project.

##### § 710.103 Policy.

It is the policy of the FHWA to encourage and cooperate with the States to expedite the acquisition of real property by agreement, to avoid litigation and relieve congestion in the courts, to assure consistent, equitable treatment of owners of property acquired for Federal and Federal-aid highway programs, and to promote public confidence in land acquisition practices related to those programs.

##### § 710.104 Definitions.

(a) *FHWA.* The Federal Highway Administration.

(b) *State.* Any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and the Trust Territory of the Pacific Islands.

(c) *State Highway Department (SHD).* That department, commission, board or official of any State charged by its laws with the responsibility for highway construction.

(d) *Acquiring agency.* (1) The State highway department, or

(2) Another State agency, or

(3) A political subdivision of the State, or

(4) The Federal Highway Administration.

(e) *To the greatest extent practicable under State Law.* For the purpose of implementing Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651, et seq.), "to the greatest extent practicable under State law" means if permitted by State law.

(f) *Initiation of negotiations for the parcel.* The date the acquiring agency makes the first personal contact with the owner, or his designated represent-

tive, of the parcel or property to be acquired for a Federal or Federal-aid project, where price is discussed.

(g) *Uneconomic remnant.* A remaining part of land, after a partial acquisition, that is of little or no utility or value to the owner.

(h) *Public sale.* To offer for sale to the general public, either by sealed bid, public auction, or other method whereby the general public is given an opportunity to purchase under open, competitive conditions.

(i) *Right-of-way activities.* Those activities, including the acquisition of rights-of-way and relocation assistance, involved in providing right-of-way for Federal or federally assisted projects.

• FR 26416, July 19, 1974; 39 FR 45215, c. 31, 1974]

## Subpart B—State Highway Department Responsibilities

### 10.201 Purpose.

a) To prescribe the general responsibility of a State highway department (SHD) relative to acquisition of rights-of-way for the Federal-aid highway systems.

b) To provide for the submission of assurances by each SHD relative to Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.).

c) To prescribe the requirements for the preparation of an operational right-of-way manual by each SHD.

d) To provide for the submission of an annual report by each SHD on its land property acquisition for Federal and federally assisted highway programs and projects.

### 10.202 Applicability.

The provisions of this subpart are applicable to all States which receive Federal financial assistance in connection with the Federal-aid highway program.

### 10.203 General responsibilities.

a) *Acquisition.* The SHD has overall responsibility for the acquisition of right-of-way on all Federal-aid highway systems.

(b) *Right-of-way organization.* Each SHD shall have a right-of-way organization adequately staffed, equipped, and organized to discharge its right-of-way responsibilities.

(c) *Use of other public right-of-way organizations.* The SHD may, by means of a written agreement, use the services of land acquisition organizations of counties, municipalities, or other State or local governmental agencies for acquiring rights-of-way for Federal-aid projects. Any such organization may be used only if it is adequately staffed, equipped, and organized to provide such services and if its practices and procedures are in substantial conformity with the SHD's accepted procedures or it will follow the SHD's accepted procedures. It is the responsibility of the SHD to fully inform political subdivisions of their responsibilities in connection with federally assisted highway projects. The SHD shall monitor real property acquisition activities conducted by political subdivisions to ascertain that right-of-way is acquired in accordance with provisions of State and Federal laws and as required by Federal Highway Administration (FHWA) directives.

(d) *Adequacy of right-of-way.* The interest acquired in all rights-of-way for Federal-aid highways shall be adequate for the construction, operation, and maintenance of the highway and for the protection of both the transportation facilities and the traveling public.

### § 710.204 Title III assurances.

(a) Each SHD shall submit to FHWA the assurances required by section 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4655).

(b) Unless statewide assurances that are acceptable to FHWA have been received, FHWA may not authorize:

(1) A State to proceed on any Federal-aid project with work which will result in an acquisition of an interest in real property, or

(2) Any federally assisted construction work to proceed on any rights-of-way acquired without Federal participation.



(c) The required assurances are:

(1) To the greatest extent practicable under State law, it will be guided in acquiring real property by the land acquisition policies in section 301 (42 U.S.C. 4651) and the provisions of section 302 (42 U.S.C. 4652), and

(2) Property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304 (42 U.S.C. 4653-4654).

(d) Compliance with the provisions of sections 303 and 304 is mandatory.

(e) In the event a SHD maintains that it is legally unable to comply with any provision of section 301 or 302 it shall submit an opinion from the chief SHD legal officer, or other appropriate legal officer setting forth citations to the statutes, or other established legal authority which would prevent such compliance. In the absence of such legal opinion, the SHD shall be expected to comply with the provisions of sections 301 and 302.

(f) Assurances accepted by FHWA prior to the issuance of this directive remain in force. Revised assurances shall be submitted to FHWA if previously accepted assurances are affected by changes in State law.

#### § 710.205 Right-of-way manuals.

(a) Each SHD shall submit in duplicate to FHWA for acceptance a manual which clearly describes the SHD's right-of-way organization and the policies, procedures, and practices it will follow where right-of-way is acquired for Federal-aid highway projects.

(b) In general, the manual should be developed for the SHD's internal use and be designed to assist SHD right-of-way personnel in complying with both State and Federal laws, regulations, directives and standards. The manual must be in sufficient detail to adequately describe particular functions, and the operational procedures through which those functions will be accomplished. It should be in sufficient depth to guide the operating right-of-way employee in how he is to perform his assigned duties. All phases of the acquisition program shall be covered.

(c) The SHD may use a format that meets its own needs.

(d) Until the SHD's manual is accepted under the provisions of this subpart, previously accepted policy and procedure statements currently applicable will remain in effect.

(e) The SHD is responsible for full compliance with FHWA requirements whether or not its manual currently reflects proper coverage of the requirements. Changes to a manual, because of new FHWA requirements or changes in State law, etc., shall be submitted to FHWA for acceptance within a reasonable period of time. FHWA approval of manual changes is not required prior to implementation by the SHD. In-house administrative type manual changes should be transmitted to FHWA for informational purposes.

### Subpart C—Reimbursement Provisions

#### § 710.301 Purpose.

To set forth provisions governing reimbursement to a State highway department (SHD) for right-of-way costs incurred in connection with a Federal or Federal-aid highway project.

#### § 710.302 Applicability.

The provisions of this subpart are applicable to all State claims for Federal-aid right-of-way reimbursement.

#### § 710.303 Reimbursement requirements and limitations.

Participation in right-of-way costs incurred by the SHD for highway and highway related projects shall be under the circumstances and to the extent set forth below:

(a) When there has been approval of a program and the SHD has been authorized to proceed with right-of-way activities and, after the effective date of the authorization, the SHD legally obligates itself under State law to pay right-of-way costs.

(b) When costs are incurred in conformity with State law and Federal Highway Administration (FHWA) directives.

(c) When costs are recognized and recorded as an obligation in the accounts of the SHD.

(d) Federal-aid participation may not exceed the statutory limitation for the particular Federal-aid funds used.

(e) On projects financed under 23 U.S.C. 120(d) for the elimination of grade crossings, Federal participation in the right-of-way cost may not exceed 70 percent, with no increase in public land States.

(f) On public land highways and on limited access roads as defined in 23 U.S.C. 101a and 210, the amount of Federal participation will be determined in accordance with specific agreements between FHWA and the SHD.

(g) Reimbursement of costs shall be made only after the project agreement has been executed.

#### **§ 710.304 Reimbursement policy.**

(a) *Real property acquisition.* Federal funds may participate in payments made by the SHD for real property or interests therein acquired in accordance with applicable State and Federal and FHWA directives. Unless otherwise provided, Federal funds may participate in the costs of real property not incorporated into the highway right-of-way.

(b) *Incidental expenses.* (1) Federal funds may participate in any expenditure of a type normal to the operation of the SHD and incidental to the acquisition of rights-of-way, whether the acquisition is by negotiation or condemnation.

(2) Federal participation will not be required in charges for the administrative and overhead expenses of either headquarters or field offices of the SHD, or other publicly maintained acquisition organizations. When advisory or administrative employees are engaged in work chargeable to a specific project, Federal participation may be allowed in claims for salary and related expenses on that project in accordance with Part 140, Subpart 140.1 of this chapter.

(3) Federal funds may participate in the usual costs and disbursements chargeable to a condemning authority under State law as part of a valid bill of costs approved by a court in a condemnation proceeding. However, whether or not the costs are included in court judgments or awarded as part costs in litigated cases, Federal

participation will not be permitted in the cost of a property owner's attorney fees, appraiser fees, expert witness fees, or similar costs which are paid by the SHD in connection with acquisition of rights-of-way, with the following exceptions:

(i) Where the final judgment is that the property cannot be acquired by condemnation, or

(ii) The proceeding is abandoned by the acquiring agency, or

(iii) An inverse condemnation proceeding is successfully maintained.

In any of the foregoing exceptions, participation will be limited to such sum as will in the opinion of the court or the head of the agency on whose behalf the proceeding was instituted, reimburse the owner for reasonable costs, disbursements, and expenses he actually incurred, including reasonable attorney, appraisal, and engineering fees.

(4) Federal funds may participate in payments by the SHD to a property owner for the following costs necessarily incurred in transferring property to the State:

(i) Recording fees, transfer taxes, and similar expenses incidental to conveying real property.

(ii) Penalty costs for prepayment of preexisting recorded mortgage entered into in good faith.

(iii) The pro rata portion of real property taxes paid which are allocable to a period subsequent to vesting of title in the SHD or effective date of possession by the SHD, whichever is earlier.

(5) *Technical guidance and training costs.* Where State employees are directly engaged in project activities or provide technical guidance, consultation, training, or otherwise work directly on specific projects with employees of a political subdivision to accomplish real property acquisition or in escalating such project operations to an acceptable level of performance, Federal funds may participate in the costs of such project activity.

(c) *Taxes.* Federal participation will not be permitted in the payment of special assessments or in the payment of taxes, except as provided in paragraphs (b)(4) and (d)(1) of this section.

(d) *Property management.* (1) Federal funds may participate in the net cost incurred by the SHD in the leasing, rental, maintenance, disposal of improvements, protection, rodent control, and clearance of real property acquired for right-of-way purposes. Taxes or payments in lieu of taxes required to be paid by a SHD are a legitimate property management expense and may be deducted from the gross rentals received.

(2) Federal funds may not participate in property management or demolition costs on excess lands acquired by the SHD when Federal participation in the costs of the related right-of-way acquisition is based on the provisions of paragraph (m)(1) of this section.

(3) Federal funds may participate in the net costs incurred by the SHD in the leasing, rental, maintenance, rodent control, protection and sale of excess lands when Federal participation in the cost of the related right-of-way acquisition is in accordance with paragraph (m)(2) of this section. In such instances, Federal funds may participate in the disposal or removal of improvements only when required by law or when such action will clearly enhance the value of the excess.

(4) Where right-of-way is acquired for future construction, the SHD may desire to close out the project before the net amount of rentals or salvage has been established. In such event, Federal participation may be established on the basis of the present worth of the estimated future net rentals and salvage.

(e) *Access rights.* (1) Where full or partial control of access is obtained on an existing highway, Federal funds may participate in the cost of access rights, whether or not other real property interest is acquired, providing the payments for the loss or impairment of access is based upon elements of damage generally compensable in eminent domain. Participation in these costs is not contingent upon further construction of the highway facility.

(2) Federal funds may not participate in payments for access rights where the controlled access highway is on a new location.

(f) *Material sites.* Subject to the provisions of Part 635, Subpart A of this chapter, Federal funds may participate as either a right-of-way or construction item in the costs of acquiring land or interests therein outside the normal right-of-way for the purpose of obtaining road building material to be made available to the contractor.

(g) *Permanent and temporary easements.* The cost of acquiring interest in lands outside the normal right-of-way is eligible for Federal participation as a right-of-way or construction item:

(1) For permanent use; such as drainage or slope easements.

(2) For temporary use; such as construction purposes or for right-way clearance.

(h) *Damages.* Federal funds may participate in severance or consequential damages, or both resulting from highway project upon an affidavit showing that the acquiring agency is obligated to pay such damages under applicable law, provided that such damages are of a type generally compensable in eminent domain, and determined by FHWA to be generally reimbursable on Federal-aid highway projects. Payments made for personal property (except as otherwise provided), loss of business or goodwill, injury of travel, diversion of traffic, and other items of damage not generally compensable in eminent domain are not eligible for Federal participation.

(i) *Utility and railroad real property.* (1) If a utility or railroad is displaced by a federally assisted highway project, Federal funds may participate in the cost of real property acquired by a SHD, utility, or railroad to replace real property owned by the road or utility and conveyed to the SHD for highway right-of-way as provided in Part 140, Subpart I and Part 645, Subpart A of this chapter.

(2) Federal funds may participate in the cost of acquisition of non-operating real property of a utility or railroad in the same manner as for other privately owned property.

(j) *Court deposits and interest thereon.* (1) Federal funds may participate in the amount deposited in court in connection with the condemnation of a parcel when the deposit is:

(i) The amount of the SHD's approved estimate of just compensation,

(ii) The amount established by court order, or

(iii) The amount established by other means required under State law as a condition of the SHD's obtaining possession of the right-of-way.

When the amount deposited exceeds the amount of the final settlement or award, the Federal share of the excess paid shall be promptly credited to the project or be deducted from any payment due the SHD from FHWA on a Federal-aid project.

Where, in the opinion of FHWA, total payments on progress vouchers for the Federal share of court debts become excessive, further payment may be withheld until the situation is remedied. The Federal share of the total amount of court deposits, the Federal share of other eligible expenses incurred on a project shall not exceed the Federal funds included in the project agreement.

Federal funds may participate in the cost of interest on the amount of the deposit into court for a period of not to exceed 45 days, from the date of deposit, where due to court procedures the deposit is not immediately available to the owner. Federal funds may participate in such interest costs where the deposit is available but the owner chooses not to withdraw it.

Where a condemnation settlement or award exceeds the amount deposited into court, Federal participation may be allowed in interest paid on the amount in excess of the deposit from the date of the original deposit to the date of settlement or award. If court procedures prevent the amount from being delivered immediately following settlement or award, Federal participation may be allowed in interest paid on the excess amount for a period not to exceed 45 days following such settlement or award. When the SHD appeals an award, Federal participation may be allowed in required interest payment on the excess until 45 days after the final determination.

Federal participation shall not be allowed in interest cost on payments to the owner where the SHD accepts a

voluntary right of entry instead of making such payment available to the owner, either directly or by deposit with the court, except in cases of unusual circumstances with prior approval by FHWA. Where the final settlement or award exceeds the amount which could have been deposited or paid, Federal participation in interest costs on the amount of the excess may be allowed from the date of physical entry upon the parcel, in accordance with paragraph (j)(4) of this section.

(k) *Tenant owned improvements.* Federal participation may be allowed in payments made to a tenant for his buildings, structures, or other improvements which are acquired by a State to the extent that such payment is not a duplication of any payments otherwise authorized by law.

(l) *Exchanges of State owned lands.* When State owned lands are exchanged for lands required for highway purposes, Federal funds may participate in the current fair market value of the land being exchanged. This concept is conditioned in that participation in the total consideration, including land, any cash payments, and any construction features to mitigate damages, may not exceed the pro rata share of the fair market value of the land required for highway purposes plus damages.

(m) *Excess acquisitions.* When only a portion of a property is required for highway right-of-way or highway related needs and the SHD elects to acquire a larger portion or the whole property, Federal participation will be in accordance with one of the following alternatives selected by the SHD for statewide application, as set forth in its Right-of-Way Operations Manual. The provisions of this paragraph do not apply to uneconomic remnants.

(1) *First alternative.* Federal participation in the fair market value of the portion of the property required for the highway project plus damages, if any, to the remainder.

(2) *Second alternative.* (i) The purpose of this alternative is only to provide an alternative means of establishing the amount of damages where only a part of a property is required for federally assisted highway project pur-

poses. There will be no Federal participation in any relocation costs associated with that part of the tract acquired which is outside the right-of-way.

(ii) An initial installment of the Federal pro rata share of the cost of the land required for the project determined by apportioning the land cost of the entire tract between the part required and part remaining solely on the basis of area, plus the cost of improvements necessarily removed for the project, less salvage value of the improvements.

(iii) A final installment, representing the Federal share of damages to the remainder, will be the difference between the initial costs of the excess property, prorated as in paragraph (m)(2)(ii) of this section, and the price realized at a public sale of the excess property. The sale must be accomplished prior to submission of the final voucher for the project or not later than 2 years from the time the highway facility is opened to traffic, whichever is earlier. Should condemnation proceedings prevent sale of the excess property within the time limits described, the excess may be disposed of within 12 months of when the SHD can legally do so.

(iv) Two or more excess areas may be combined and sold in one transaction if the SHD anticipates a higher overall return by such action.

(v) Should the SHD not dispose of the excess property within the time limits set forth in paragraph (m)(2)(iii) of this section, Federal participation shall be limited as under paragraph (m)(2)(ii) of this section unless an exception is granted by FHWA or unless an alternative disposal procedure has been accepted by FHWA.

(n) *Uneconomic remnants.* Federal funds may participate in the acquisition costs of uneconomic remnants whether or not the remnants are incorporated in the highway right-of-way.

(o) *Acquisition in connection with other Federal or federally-assisted programs.* (1) Rights-of-way may be acquired by the SHD for a Federal-aid highway in coordination or cooperation with other Federal or federally assisted programs. The SHD and the

agency involved shall set forth in an agreement or memorandum of understanding the responsibilities of each in the acquisition of real property involved and the basis for the sharing costs. Such agreements should be executed during early stages of project development, and will not jeopardize future Federal participation in costs the SHD, if the agreement does not constitute a binding request for conveyance of specified lands. The agreement should be in effect when a request for authorization to acquire is submitted to FHWA.

(2) Federal funds may participate in obligations for costs incurred by SHD after FHWA authorization is received. For purposes of paragraph (o) of this section an obligation is incurred by the SHD on the date the SHD commits itself to the acquiring agency through a binding request for conveyance of specified lands.

(3) Federal (FHWA) participation in costs incurred by the SHD shall be terminated on the following basis, unless prior approval is obtained from FHWA for participation on some other basis.

(i) Where the project of the acquiring agency, such as an urban renewal project, is developed without construction of the highway project, and land has been cleared at the time the SHD requests conveyance of specified lands, Federal (FHWA) participation may not exceed its pro rata share of the appraised value of the cleared lands required. The appraised value shall be mutually acceptable to the SHD and the other agency involved. Where the same conditions exist except that improvements have not been removed at the time of request for conveyance, Federal (FHWA) participation may not exceed the fair market value as determined by costs to the acquiring agency.

(ii) Where the project of the acquiring agency, such as an urban renewal project, was continued after written knowledge that highway project would be involved, whether or not the relocation thereof was known, Federal (FHWA) participation may not exceed the fair market value as determined by cost to the acquiring agency. It would not matter whether any improvements were removed before

ter a request for conveyance is submitted. The SHD must assure itself at such real property acquisitions are in compliance with Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act 1970 (42 U.S.C. 4651, et seq.).

(ii) "Cost to the acquiring agency," purposes of Federal (FHWA) participation, may include the fair market value payment, incidental acquisition expenses, settlement costs, and clearance and demolition costs, subject to agreement between the parties, shall exclude interest on borrowed money, and administrative and overhead expenses. (See also § 740.9(d) of subchapter regarding relocation costs.)

(v) When the "cost to acquiring agency" forms the basis of value for participation, FHWA may accept either a parcel by parcel cost or an overall proration based on total area without regard to location of improvements within the acquiring agency's project area. Where a parcel by parcel basis is used, costs may be prorated on area basis where only a part of a parcel is required for highway purposes.

(v) Where an urban renewal or any other such federally assisted agency performs work in connection with acquisition of rights-of-way for Federal Federal-aid highway projects, FHWA may accept certifications of other Federal agency that the work has been performed in accordance with its governing regulations.

(v) *Separation of functions.* (1) Except as provided in 23 CFR Part Subpart D, Federal funds may not participate in the cost of acquisition of property, or related incidental costs, here:

(a) Negotiations were conducted by a person who made an appraisal of or the reviewing appraiser for the property, or

(b) Payments have been delivered in person by those who have negotiated, raised, or acted as reviewing appraiser for the property, or

(c) Payments have been delivered in person by the attorney who negotiated settlement with the owner.

(d) The provisions of paragraph (1) of this section apply whether

such person was a salaried employee of the SHD or other acquiring agency, or was retained on a fee basis.

(q) *Construction in mitigation of damages.* Costs of construction performed by the SHD in order to mitigate damages to a remainder of real property are eligible for Federal participation, provided that such construction results in an appropriate reduction in compensation to be paid the owner.

[39 FR 26416, July 19, 1974; 39 FR 45215, Dec. 31, 1974, as amended at 40 FR 41524, Sept. 8, 1975; 41 FR 9321, Mar. 4, 1976]

### § 710.305 Support for claims.

(a) *Progress and final claims.* (1) Any progress or final claim for Federal fund reimbursement of expenditures made for right-of-way shall be supported by the following documents and information:

(i) A right-of-way map or plan showing the rights-of-way authorized and actually acquired including parcel identification numbers, area acquired, property lines of the area acquired, and any other pertinent data affecting the cost of right-of-way such as structures, improvements, and fences.

(ii) Statement of cost of right-of-way showing:

(A) Parcel number.

(B) Cost of parcel.

(C) Cost of excess land, if any, acquired from same ownership.

(D) Credits by parcel or project.

(E) Incidental expenses by parcel or project.

(F) Cost of construction performed in mitigation of damages on a parcel basis, if claimed as a right-of-way item.

(2) The required documents and information may be submitted with the claim or made available in the SHD's files in readily identifiable form as determined appropriate by the FHWA in consultation with the SHD. Further, where a right-of-way map or plan which meets the requirements set forth in paragraph (a)(1)(i) of this section has been previously submitted, the FHWA may accept such map or plan for final or progress claim purposes.

(3) The information required in paragraph (a)(1)(ii) of this section

may be submitted under current billing procedures where a memorandum of understanding on such procedures is in effect between the SHD and FHWA.

(b) *Document availability.* All plats, appraisals, options, purchase agreements, title evidence, negotiation records, deeds, relocation assistance and payment records, and other data and documents relative to the acquisition of the right-of-way shall be available for inspection at reasonable times by authorized representatives of the FHWA and other authorized Federal representatives.

(c) *Federal-aid project numbers.* Right-of-way plans, contracts, deeds, appraisals, options, vouchers, correspondence, and all other documents and papers to which FHWA needs to refer shall carry the Federal-aid project number for ready identification.

[39 FR 26416, July 19, 1974; 39 FR 45215, Dec. 31, 1974]

**§ 710.306 Withholding Federal participation.**

(a) If the FHWA determines that any amount claimed is not adequately supported, it may approve Federal participation in the amount it determines is adequately supported and shall notify the SHD, in writing, citing the reasons why items and amounts are not eligible for Federal participation. Where correctable noncompliance with provisions of law or FHWA requirements exists, Federal funds may be withheld until compliance is obtained. Where the noncompliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total.

(b) If, at any time, the FHWA determines that the organization, practices, and procedures actually applied by the SHD are not in substantial conformity with those accepted by the FHWA, or are otherwise not acceptable, the FHWA shall notify the SHD in writing. No further authorizations for acquisition of right-of-way shall be issued by the FHWA after the date of such notification until:

(1) A review of the facts substantiates to the satisfaction of FHWA that the SHD's accepted practices and pro-

cedures are satisfactory and will be adhered to by the SHD, or

(2) Revised practices and procedures have been submitted by the SHD and accepted by FHWA. The FHWA may participate in claims made or to be made by the SHD following review of the facts pertaining to the matter.

**Subpart D—Civil Rights**

**§ 710.401 Purpose.**

To prescribe the general policy of the Federal Highway Administration (FHWA) in the area of civil rights relative to the right-of-way acquisition function.

**§ 710.402 Applicability.**

The provisions of this section apply to all States and political subdivisions thereof which receive Federal financial assistance in connection with Federal-aid highway program.

**§ 710.403 Definitions.**

As used in this subpart:

(a) "Recipient" means any State, territory, possession, the District of Columbia, Puerto Rico; any political subdivision or instrumentality thereof; any public or private agency, institution, organization, or other entity; any individual in any State, territory, possession, the District of Columbia, Puerto Rico to whom Federal financial assistance is extended, directly or through another recipient, for a program, including any successor, assignee, or transferee thereof; but a term does not include any ultimate beneficiary under any such program.

(b) "Program" refers to the Federal-aid highway program under 23 U.S.C. 101, et seq.

**§ 710.404 Policies.**

(a) *Section 601 of Title VI, Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.):* "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

(b) *Section 162(a) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 324)*

no person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program activity receiving Federal financial assistance under this title or carried out under this title. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and ethnic discrimination, under Title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive, and will not prejudice or cut off any other remedies available to a discriminated person.

**Equal Employment Opportunity.** The FHWA's equal employment opportunity responsibilities have their origin in the Civil Rights Act of 1964, Executive Orders 11246, 11247, and 11375 and related rules, regulations, and procedures of the Civil Service Commission, the Department of Justice, the Department of Transportation, and the Equal Employment Opportunity Commission. These direct that affirmative and positive measures be taken to ensure equal opportunity of employment in federally assisted programs and projects.

It is the policy of the FHWA that each employee and representative of the agency to which this directive applies shall perform all official actions affirmatively and in full accord with the letter and letter of the Constitution and applicable laws, regulations, and policies to assure equality of opportunity for all persons, and to avoid even the appearance of discrimination because of race, creed, color, sex, or national origin.

#### 405 Regulations.

Section 602 of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 6101-1) states in pertinent part that a Federal agency empowered to provide Federal financial assistance is authorized and directed to effectuate the provision of section 601 by issuing such necessary rules, regulations, and orders. Pursuant to this requirement, 49 CFR 21 was issued by the Office of Secretary of Transportation.

(1) In accordance with 23 U.S.C. 324, prohibition of discrimination on the

ground of sex has been added to the provisions of 49 CFR 21 included within this directive.

(c) *Discriminatory action prohibited.* (1) A recipient may not directly or through contractual or other arrangements, on the grounds of race, color, sex, or national origin:

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his or her receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person, in any way, in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he or she satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit, provided under the program; or

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise, or afford him or her an opportunity to do so which is different from that afforded others under the program.

(2) In determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such programs, a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, sex or national origin, or have the effect of defeating or substantially im-



pairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex or national origin.

(3) In determining the site or location of facilities, a recipient may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this directive applies, on the grounds of race, color, sex or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of Title VI of the Civil Rights Act of 1964 or this directive.

(4) As used in this directive, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance, include any service, financial aid, or other benefit provided in or through a facility receiving Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this directive does not limit the generality of the prohibition in § 710.404(a) and § 710.404(b).

(6) The provisions of this directive do not prohibit the consideration of race, color, sex or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, sex or national origin. Where previous discriminatory practice or usage tends, on the ground of race, color, sex or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this directive applies, the recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Civil Rights Act of 1964.

(d) *Specific discriminatory actions prohibited.* (1) The State, acting through its highway department, may not discriminate in its selection and retention of contractors, including without limitation, those whose services

are retained for or incidental to, acquisition of right-of-way, property management, and fee contracts and other commitments with persons for services and expenses incidental to the acquisition of right-of-way.

(2) Federal-aid contractors may not discriminate in their selection and retention of first-tier subcontractors and first-tier subcontractors may not discriminate in their selection and retention of second-tier subcontractors who participate in Federal-aid highway acquisition of right-of-way.

(3) The State may not discriminate against the traveling public and business users of the federally assisted highway in their access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed on, over or under the right-of-way of such highways.

(4) Neither the State, any other persons subject to this part, nor its contractors and subcontractors may discriminate in their employment practices in connection with highway construction projects assisted by the Federal Highway Administration.

(e) *Intimidatory or retaliatory actions prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Section 601 of the Civil Rights Act of 1964 or 49 CFR 21, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing. The identity of complainant shall be kept confidential except to the extent necessary to carry out the purposes of 49 CFR 21.

(f) *State civil rights assurance.* Each State highway department has executed a Title VI Assurance providing that specific nondiscrimination provisions, as set forth in Appendix A to the Assurance, will be included in every contract subject to the Civil Rights Act of 1964 and the DOT Title VI Regulations (49 CFR 21). The Assurance further provides that the provision of Appendix C thereof shall be included in any future deeds, leases, permits, licenses, and similar agree-

ments entered into by the State with other parties (1) for the subsequent transfer of real property acquired or approved under the Federal-aid highway program, and (2) for the construction or use of or access to space on, or under real property acquired, improved, under the Federal-aid highway program. Accordingly, the provisions of Appendix A of the Title Assurance shall be included in all reasonable service right-of-way contracts, and the provisions of Appendix to the Title VI Assurance shall be included in those documents enumerated above.

## **PART 712—THE ACQUISITION FUNCTION**

### **Subpart A—Policy**

- 101 Purpose.
- 102 Applicability.
- 103 Policies.

### **Subpart B—General Provisions and Project Procedures**

- 201 Purpose.
- 202 Applicability.
- 203 General provisions.
- 204 Project procedures.

### **Subpart C—Negotiations**

- 301 Purpose.
- 302 Definition.
- 303 Applicability.
- 304 Procedures.

### **Subpart D—Administrative Settlements, Legal Settlements, and Court Awards**

- 401 Purpose.
- 402 Definitions.
- 403 Applicability.
- 404 Administrative settlements.
- 405 Legal settlements.
- 406 Court awards.
- 407 Noncompensable items.
- 408 Special counsel.

### **Subpart E—Federal Land Transfers and Direct Federal Acquisition**

- 2.501 Purpose.
- 2.502 Applicability.
- 2.503 Federal land transfers.
- 2.504 Direct Federal acquisition.

### **APPENDIX 1—APPLICATION FOR FEDERAL LAND TRANSFERS**

Sec.

### **Subpart F—Functional Replacement of Real Property in Public Ownership**

- 712.601 Purpose.
- 712.602 Applicability.
- 712.603 Federal Lands.
- 712.604 Functional replacement.
- 712.605 Federal participation.
- 712.606 Procedures.

### **Subpart G—Right-of-Way Revolving Fund**

- 712.701 Purpose.
- 712.702 Policies.
- 712.703 Procedures.

### **Subpart H—Land Service Facilities**

- 712.801 Purpose.
- 712.803 Applicability.
- 712.805 Policies.

### **Subpart A—Policy**

**AUTHORITY:** 42 U.S.C. 2000d-1, 4633, 4651-4655; 23 U.S.C. 315, 323; 49 CFR 1.48(b); 23 CFR 1.32.

**SOURCE:** 39 FR 29590, Aug. 16, 1974, unless otherwise noted.

#### **§ 712.101 Purpose.**

This subpart prescribes Federal Highway Administration (FHWA) policies related to the acquisition function. The intent and purpose of these policies are to assure the establishment of uniform real property acquisition practices to provide consistent, equitable treatment for owners and tenants of real property acquired for Federal and federally assisted highway and highway related projects.

#### **§ 712.102 Applicability.**

(a) To the greatest extent practicable under State law, the policies in § 712.103 (a) through (n) of this subpart are applicable to all States and political subdivisions thereof that acquire real property for any highway or highway related project in which Federal funds will participate in any part of the cost of the project.

(b) The policies in § 712.103 (o) through (s) of this part are applicable to all States and political subdivisions thereof that acquire real property for any highway or highway related project in which Federal funds will

participate in any part of the cost of the project.

§ 712.103 Policies.

(a) *Negotiated purchase.* Every reasonable effort shall be made to acquire expeditiously real property by negotiation.

(b) *Prompt offer.* The acquiring agency shall make a prompt offer to acquire real property for the full amount it has established and approved as just compensation for the acquisition.

(c) *Summary statement.* Upon initiation of negotiations, the acquiring agency shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for the amount it has established as just compensation for the proposed acquisition. As a minimum, the summary statement shall include:

(1) The amount established as just compensation.

(2) A statement explaining that the offer is based on the acquiring agency's review and analysis of an appraisal(s) of such property made by a qualified appraiser(s).

(3) Identification of the real property to be acquired, including the estate or interest being acquired.

(4) Identification of improvements and fixtures considered to be part of the real property to be acquired.

(5) Where appropriate, the just compensation for the real property to be acquired and for damages to remaining real property shall be separately stated.

(d) *Surrender of possession.* No owner shall be required to surrender possession of real property before the acquiring agency pays the agreed purchase price or deposits with the court, for the use of the owner, an amount not less than the agency's approved estimate of just compensation, or the amount of the award of compensation in the condemnation proceeding for such property.

(e) *Notice to vacate.* To the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling, or to move his business or farm operation without at least 90 days written notice

from the acquiring agency of the date by which such move is required.

(f) *Fair rental value.* If the acquiring agency permits an owner or tenant occupy the real property acquired on rental basis for a short term or for period subject to termination by the agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short term occupier.

(g) *Coercion.* In no event shall the acquiring agency, in order to compel an agreement on the price to be paid for the property: (1) Advance the time of condemnation; or (2) defer negotiations; or (3) defer condemnation until the deposit of funds in court for the use of the owner; or (4) take any other action coercive in nature.

(h) *Condemnation.* If any interest real property is to be acquired by exercise of the power of eminent domain, the acquiring agency shall institute formal condemnation proceedings. The acquiring agency shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(i) *Uneconomic remnant.* If the acquisition of only a part of a property would leave its owner with an uneconomic remnant(s), the acquiring agency shall offer to acquire the remnant(s).

(j) *Improvements—interest to be acquired.* If the acquiring agency acquires any interest in real property, shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired which it requires to be removed from the real property or which it determines will be adversely affected by the use to which the real property acquired will be put.

(k) *Improvements—just compensation.* For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired under paragraph (j) of this section the building, structure, or other improvement shall be deemed to be a part of the real property to be acquired, notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove the building.

structure, or improvement at the expiration of the lease.

(l) *Improvements—tenant owned.* The tenant who owns a building, structure, or other improvement required to be acquired under paragraph (j) of this section shall be paid the fair market value which the building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of the building, structure, or improvement for removal from the real property, whichever is greater.

(m) *Duplication of payment.* Payment under paragraph (l) of this section shall not result in duplication of payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved claims all interest in the improvements of the tenant. In consideration of any such payment, the tenant shall assign, transfer, and release to the acquiring agency all his right, title, and interest in and to such improvements. A separate summary statement shall be provided to such owner where his improvements are being separately acquired.

(n) *Tenant rights.* Nothing in paragraphs (j) through (m) shall be construed to deprive the tenant of any rights to reject payment under these paragraphs and to obtain payment for his property interests in accordance with other applicable law.

(o) *Incidental expense reimbursement.* The acquiring agency, as soon as practicable after the date of payment of the purchase price, or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses necessarily incurred therefor.

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency;

(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency, or the effective date of possession of such real property by the acquiring agency, whichever is the earlier.

(p) *Litigation expenses.* The acquiring agency shall pay to the owner of any right, title, or interest in real property such sum as the court, having jurisdiction of a proceeding instituted by the acquiring agency to acquire the real property by condemnation, awards the owner reimbursement for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if:

(1) The final judgment is that the acquiring agency cannot acquire the real property by condemnation; or

(2) The proceeding is abandoned by the acquiring agency.

(q) *Inverse condemnation expenses.* Where an inverse condemnation or similar proceeding is successfully maintained for the taking of real property, the acquiring agency shall pay the owner, as a part of the judgment or settlement, such sum as will in the opinion of the court or the official effecting the settlement, reimburse the owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the proceedings.

(r) *Donations.* Nothing in this regulation shall be construed to prevent a person whose real property is being acquired for a federally aided highway project from making a gift or donation of such property, or any part thereof, or of any of the compensation paid therefor, after such person has been fully informed of his right to receive just compensation for the acquisition of his property.

(s) *Civil rights.* The right-of-way acquisition function shall be conducted in such way and manner as to assure that no person shall, on the ground of race, color, sex, or national origin, be denied the benefits to which the person is entitled, or be otherwise subjected to discrimination.

[39 FR 29590, Aug. 16, 1974, as amended at 40 FR 3982, Jan. 27, 1975]

## Subpart B—General Provisions and Project Procedures

**AUTHORITY:** 42 U.S.C. 2000d-1, 4633, 4651-4655; 23 U.S.C. 315, 323; 49 CFR 1.48(b); 23 CFR 1.32.

**SOURCE:** 39 FR 29591, Aug. 16, 1974, unless otherwise noted.

### § 712.201 Purpose.

This subpart prescribes Federal Highway Administration (FHWA) project provisions and procedures relating to the acquisition of real property for highway and highway related projects.

### § 712.202 Applicability.

(a) The provisions of § 712.203 of this subpart are applicable to all States and political subdivisions thereof that acquire real property for any highway or highway related project where Federal funds will participate in any part of the cost of the project.

(b) The provisions of § 712.204 of this subpart are applicable to all States and political subdivisions thereof where Federal funds will participate in any part of the right-of-way costs of the project.

### § 712.203 General provisions.

(a) *Real property interest to be acquired.* (1) On federally assisted highway projects, the acquiring agency shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation, and maintenance of the project.

(2) Where State law permits, rights-of-way for Federal-aid highways shall be acquired in unlimited vertical dimension unless savings in the overall cost of a project, or other considerations in the public interest, such as plans for community development or multiple use, support the acquisition of rights-of-way of limited vertical dimension. Where the acquisition is in limited vertical dimension, the rights acquired shall be sufficient to encumber the unacquired realty with provisions which will ensure full use and safety of the highway facility to be constructed.

(3) Subsurface mineral rights may be reserved to the owner there where the acquisition of such rights not reasonably necessary for the construction, protection, support, or preservation of the highway facility be constructed.

(b) *Use and occupancy of right-of-way.* (1) All real property, including airspace, within the right-of-way boundaries of a project shall be exclusively devoted to public highway purposes and preserved free of all public and private installations, facilities, encroachments except as authorized by FHWA.

(2) Use of airspace for nonhighway purposes shall be in accordance with the provisions of 23 CFR Part 1 Subpart B.

(3) Joint development and multiple use of highway rights-of-way shall be in accordance with the provisions of Volume 7, Chapter 7, section 8, of the Federal-Aid Highway Program Manual.<sup>1</sup>

(4) Railroads and utilities may be accommodated in accordance with the provisions of 23 CFR Part 645, part B.

(5) Bikeways and pedestrian ways may be accommodated in accordance with the provisions of 23 CFR Part 652.

(c) *Public information brochure.* The State highway department shall prepare a brochure adequately describing the land acquisition process under State law, and the owner's rights, privileges, and obligations thereunder. The information contained therein should be clearly presented in nontechnical terms to the extent practicable. Where appropriate, such brochure should be written in language in addition to English.

### § 712.204 Project procedures.

(a) *Programming.* Any phase of right-of-way related work in which Federal funds are to participate shall be programmed in accordance with the provisions of 23 CFR Part 630, Subpart A.

<sup>1</sup>Copy of this directive is available at FHWA offices listed in 49 CFR Part 7, Appendix D.

(b) *Authorizations—general.* (1) The SHD shall request, in writing, FHWA authorization to proceed with right-of-way acquisition if Federal funds are to participate in the costs related there-

(2) Acquisition of real property or interests therein for highway or highway related purposes which are determined necessary by project design requirements or other FHWA policy requirements may be authorized by FHWA, including:

(i) Real property or interests therein pursuant to 23 CFR Part 772, and;

(ii) Whole properties or portions thereof to a logical boundary or barrier, thus avoiding severance damage payments and providing a highway facility more in conformity with the neighborhood through which it passes.

(c) *Authorizations.* Concurrent with subsequent to program approval, FHWA may, in response to a SHD's request:

(1) Authorize the SHD to proceed with those right-of-way activities necessary for the completion of the final environmental impact statement or negative declaration and preparation of public hearings, or

(2) Authorize the SHD to proceed with all preliminary right-of-way activities, including property appraisals, but not including negotiations, on the condition that appraisals of partial takings will not be made until the SHD has prepared right-of-way plans, or

(3) Authorize the SHD to proceed with those right-of-way activities enumerated in paragraph (c)(2) of this section, and authorize the acquisition of rights-of-way on a project with the stipulation that the following requirements will be met before acquisition will commence:

(i) The relocation project assurances and relocation plan have been approved by FHWA pursuant to the provisions of §§ 740.6(b) and 740.12 of this chapter, and

(ii) The provisions of § 771.5 of this chapter have been met relative to environmental impact statements, negative declarations, and public hearing transcripts and certifications, and

(iii) where applicable, the provisions of § 771.19 of this chapter have been met relative to section 4(f) statements, and

(iv) where applicable, the provisions of § 790.9 paragraph (e)(2) of this chapter have been met relative to location and design approval.

(d) *Authorizations—hardship acquisition and protective buying.* (1) In extraordinary cases or emergency situations the State highway department may request and the Federal Highway Administrator may approve Federal participation in the acquisition of a particular parcel or a limited number of particular parcels within the limits of a proposed highway corridor prior to completion of processing of the final environmental impact statement or adoption of the negative declaration, but only after (i) the State highway department has given official notice to the public that it has selected a particular location to be the preferred or recommended alignment for a proposed highway, or (ii) a public hearing has been held or an opportunity for such a hearing has been afforded. Proper documentation shall be submitted to show that the acquisition is in the public interest and is necessary to:

(A) Alleviate particular hardship to a property owner, on his request, in contrast to others because of an inability to sell his property;

(B) Prevent imminent development and increased costs of a parcel which would tend to limit the choice of highway alternatives.

(2) Hardship acquisition and protective buying procedures shall not apply to properties subject to the provisions of 49 U.S.C. 1653(f) (commonly known as section 4(f)) or 16 U.S.C. 470(f) (historic properties) until the required section 4(f) determination and the procedures of the Advisory Council on Historic Preservation are completed.

(3) Acquisition of property under § 712.204(d) shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.

(4) Ultimate Federal participation in the cost of property acquired under § 712.204(d) is dependent upon the in-

corporation of such property in the final highway right-of-way. Where a parcel is partially incorporated, Federal participation will be in accordance with the alternative selected for statewide application pursuant to 23 CFR 710.304(m).

(5) Subject to paragraphs (d)(2) and (d)(3) of this section, a SHD may acquire property with its own funds under § 712.204(d) before FHWA program approval and not jeopardize Federal participation in subsequent project costs provided the SHD's acquisition activities comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d) et seq.), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.), and 23 CFR Part 740. Costs so incurred are not eligible for Federal participation.

(e) *Public hearings.* Information shall be presented and an opportunity provided for discussion of the land acquisition process at public hearings, in order to assure that the public is adequately informed.

(f) *Project field inspections.* Right-of-way personnel shall make project field inspections at appropriate times throughout the development of a project to assure that adequate consideration is given to significant right-of-way elements involved in the location and design of the project including possible social, economic, and environmental effects.

(g) *Right-of-way project agreements.*

(1) Project agreements and modifications thereof shall be prepared and executed in accordance with Part 630, Subpart C of this chapter.

(2) Project agreements may be entered into at any time after Federal funds have been obligated on the project. The estimate of cost of right-of-way required for programming a project may be used for project agreement purposes, provided a more accurate and up-to-date estimate is not available.

(3) Project agreements covering acquisition of right-of-way shall, pursuant to 23 U.S.C. 108(a), contain a clause providing for the refund of any payments made by the FHWA in the event that actual construction of a

road on such rights-of-way is not undertaken by the close of the 10th fiscal year following the fiscal year in which the agreement was executed. Pursuant to a State's written request, FHWA may approve a longer period which is determined to be reasonable. The SHD will be considered in compliance with the statutory requirements where, before the expiration of the approved period, it has taken all of the following actions:

(i) Awarded a contract for construction of a reasonable section of the highway covered by the agreement,

(ii) Proceeded with sufficient actual work to give visual evidence thereof of the construction site, and

(iii) Provided evidence of good faith to proceed without delay to complete construction of the highway upon the entire length of right-of-way covered by such project agreement.

[39 FR 29591, Aug. 16, 1974, as amended 40 FR 33445, Aug. 8, 1975; 41 FR 9321, May 4, 1976; 41 FR 24347, June 16, 1976; 42 FR 26652, May 25, 1977]

## Subpart C—Negotiations

**AUTHORITY:** 42 U.S.C. 2000d-1, 4633, 4665; 23 U.S.C. 315, 323; 49 CFR 1.48(b); CFR 1.32.

**SOURCE:** 39 FR 29592, Aug. 16, 1974, and otherwise noted.

### § 712.301 Purpose.

The purpose of this subpart is to prescribe Federal Highway Administration (FHWA) procedures relating to acquisition of real property by negotiation.

### § 712.302 Definition.

For purposes of this subpart, negotiation is defined as the process by which the acquiring agency makes every reasonable effort to acquire real property through a voluntary transfer of such property.

### § 712.303 Applicability.

The provisions of this subpart are applicable to all States and political subdivisions thereof in the acquisition of real property for any highway or highway related project in which Federal funds will participate in any part

f the right-of-way costs of the project.

#### 712.304 Procedures.

(a) *Staff and fee negotiators.* (1) Negotiations shall be conducted by qualified staff employees of the State highway department (SHD) or political subdivision of a State, except as provided in paragraph (a)(3) of this section.

(2) The SHD shall establish qualification standards for staff negotiators. (3) In exceptional cases only, and on prior approval of FHWA on a project basis, firms and individuals meeting the SHD's qualification standards may be employed by contract for negotiating purposes where the acquiring agency's workload significantly exceeds its normal workload.

(b) The employment of fee negotiators shall be by written contract.

(1) The amount of the fee should be established on a parcel basis, and shall be determined as a percentage of market value. The fee shall represent a fair payment for the work performed.

(b) *Negotiation contracts*—(1) *State agent owner.* (i) Except as provided in paragraph (b)(1)(ii) of this section, the negotiator shall: (A) Make all reasonable efforts to personally contact the State resident property owner or designated representative, (B) explain the acquisition, and (C) offer in writing the approved estimate of just compensation of the property to be acquired, and a summary statement of basis for the offer. When all reasonable efforts to make a personal contact have failed, the owner may be contacted by certified or registered first class mail or other means appropriate to the situation.

(ii) The FHWA may permit exceptions to the personal contact provisions of paragraph (b)(1)(i) of this section on a parcel by parcel basis.

(2) *Out-of-state owner.* An out-of-state property owner may be personally contacted, or the acquiring agency may elect to contact the owner by certified or registered first class mail.

(c) *Information to be provided owner.* Not later than the first contact where price is discussed, the owner shall be provided with a brochure de-

scribing the land acquisition process and the owner's rights, privileges, and obligations thereunder.

(d) *Revised offers.* A revised offer and summary statement of its basis shall be provided to the owner if:

(1) The taking is revised, or

(2) The approved estimate of just compensation is revised by the reviewing appraiser.

(e) *Time to consider offer.* The property owner shall be given a reasonable period of time to consider the offer and obtain professional advice or assistance if he so desires.

(f) *Records of negotiations.* (1) The negotiator shall maintain timely adequate records of negotiation on a parcel basis. The record shall be written in permanent form and completed within a reasonable time after each contact with the property owner. The report shall be signed and dated by the assigned negotiator.

(2) When negotiations are successful, a signed statement is to be prepared by the negotiator to the effect that:

(i) The written agreement embodies all considerations agreed to between the negotiator and the property owner;

(ii) The negotiator understands the acquired property is for use in connection with a Federal-aid highway project;

(iii) The negotiator has no direct or indirect present or contemplated future personal interest in the property or in any monetary benefit from the acquisition of the property; and

(iv) Agreement was reached without coercion of any type.

(3) Upon termination of negotiations, the above records are to become a part of the project parcel file.

(g) *Owner retention of improvements.* The owner of improvements located on the lands being acquired as right-of-way should be offered the option of retaining those improvements at a retention value determined by the SHD. The SHD's retention value determination should be available at the initiation of negotiations or within a reasonable period of time after the owner expresses an interest in the retention concept. Retention value should normally be established



by property management personnel through a comparative analysis of improvements sold at public sale.

### Subpart D—Administrative Settlements, Legal Settlements, and Court Awards

**AUTHORITY:** 42 U.S.C. 2000d-1, 4633, 4651-4655; 23 U.S.C. 315, 323; 49 CFR 1.48(b); 23 CFR 1.32.

**SOURCE:** 39 FR 29593, Aug. 16, 1974, unless otherwise noted.

#### § 712.401 Purpose.

This subpart prescribes Federal Highway Administration (FHWA) policies relating to settlement of acquisitions through administrative means and legal processes.

#### § 712.402 Definitions.

As used in this subpart:

(a) *Administrative settlement.* Any settlement, made or authorized to be made by the responsible State highway department (SHD) official, which is in excess of the SHD's approved estimate of just compensation.

(b) *Legal settlement.* Any settlement made by the responsible State legal representative. This includes stipulated settlements approved by the court in which the condemnation action has been filed.

(c) *Court award.* Any decision following a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of compensation for a taking under the laws of eminent domain.

#### § 712.403 Applicability.

The provisions of this subpart are applicable in the acquisition of real property for a highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project.

#### § 712.404 Administrative settlements.

(a) The SHD shall identify the responsible official who has the authority to approve administrative settlements. In a decentralized operation one official in each district may be delegated approval authority.

(b) The designated State representative may approve an administrative settlement when it is determined that such action is in the public interest, arriving at a determination to approve an administrative settlement, the designated official must give full consideration to all pertinent information including:

(1) All available appraisals, including owners' appraisal.

(2) The approved estimate of compensation.

(3) Recent court awards for similar type properties.

(4) The negotiator's recorded information.

(5) The range of probable testimony as to fair market value should condemnation be filed.

(6) The estimate of trial cost considered in conjunction with other information.

(7) The opinion of legal counsel when appropriate.

(c) The SHD's records shall be documented whenever an administrative settlement is made. The rationale for the settlement shall be set forth in writing. Federal funds may participate in administrative settlements and documented in accordance with the provisions of this paragraph.

#### § 712.405 Legal settlements.

(a) The SHD shall identify the legal office or official responsible for making legal settlements. The coordination which will be followed between the legal office and the right-of-way office prior to making any settlement shall be described.

(b) The legal office or official must make a legal settlement when it is determined that such action is in the public interest. Legal settlements which are based upon new or revised appraisal data as the principal justification shall be coordinated with and approved by the responsible official of the acquiring agency having final authority over the right-of-way matters.

(c) The appropriate State file shall be documented whenever a legal settlement in excess of the amount established as just compensation is made. The rationale for the settlement shall be set forth in writing. Federal funds

may participate in legal settlements made and documented in accordance with the provisions of this paragraph.

**§ 712.506 Court awards.**

Federal funds may participate in excess of the amount established as compensation if there is supporting documentation in the appropriate file which includes:

- a) A trial report, signed by the trial attorney.
- b) A signed statement of the legal counsel in charge of representing the State in condemnation litigation stating the concurrence in the reasoning and disposition of the case.

**§ 712.507 Noncompensable items.**

Should the administrative settlement, legal settlement or the court award include an apparent payment for items considered ineligible for Federal participation, the amount paid for such items shall be determined by the State and excluded from the SHD's share for Federal participation in the settlement or award.

**§ 712.508 Special counsel.**

a) If part-time assistants or legal counsel are regularly employed for Federal-aid right-of-way procurement and this is set forth in the SHD's manual or procedures and accepted by the FHWA, reimbursement may be made for the eligible cost of the services of such attorney. Advance FHWA approval shall be obtained for employment of special counsel for any particular project, if not covered in the approved State plan. Federal participation may be allowed upon a proper showing that:

- a) The employment of special counsel is in the public interest,
- b) The fee is reasonable, and
- c) The fee is not on a percentage basis.

b) Federal participation shall not be permitted in payment made to a city or county attorney for work performed in connection with the acquisition of rights-of-way where he is obligated to perform such work without additional compensation. In those cases where the normal duties of the attorney for which he is compensated do not include the acquisition of prop-

erty for highway purposes, Federal funds may participate in payments to him for services performed upon a proper showing of the facts.

[39 FR 29593, Aug. 16, 1974; 39 FR 34277, Sept. 24, 1974]

**Subpart E—Federal Land Transfers and Direct Federal Acquisition**

**AUTHORITY:** 23 U.S.C. 101(a), 107, 108 (a) and (b), 111, 204(a), 210(e), 308, 315, and 317; 42 U.S.C. 4633, 4651 and 4654; 23 CFR 1.132; 49 CFR 1.48(b) and Part 21.

**SOURCE:** 39 FR 32604, Sept. 10, 1974, unless otherwise noted.

**§ 712.501 Purpose.**

This regulation prescribes Federal Highway Administration (FHWA) policies and procedures relating to Federal land transfers and direct Federal acquisition.

**§ 712.502 Applicability.**

The provisions of § 712.503 of this subpart apply to all projects on a Federal-aid system, direct Federal projects, or federally assisted highway projects. The provisions of § 712.504 apply only to Interstate, Defense Access, and Forest highways.

[39 FR 32604, Sept. 10, 1974, as amended at 41 FR 9321, Mar. 4, 1976]

**§ 712.503 Federal land transfers.**

(a) Title 23 U.S.C., sections 107(d) and 317, provide for the transfer of lands or interests in lands owned by the United States to a State Highway Department (SHD) or its nominee for highway purposes.

(b) If lands or interests in lands owned by the United States are needed for highway purposes, the SHD shall pursuant to 23 U.S.C. 107(d) and 317 file an application with the FHWA except that if such lands or interests therein are managed or controlled by the Army, Air Force, Navy, Veterans Administration, or Bureau of Indian Affairs, the SHD may make applications directly to said agencies or their land acquisition agent as indicated in Appendix 1. All applications shall include or be accom-

panied by the information shown in Appendix 1.

(c) Deeds for conveyance of lands or interests in lands owned by the United States shall be prepared by the SHD, unless the FHWA at its discretion chooses to prepare them. Such deeds shall contain the clauses required by the FHWA and 49 CFR 21.7(a)(2). When the SHD prepares the deed, it will submit the proposed deed to the FHWA for review and execution. Following execution, the grantee shall record the deed in the appropriate land record office and so advise the FHWA of the recording data.

(d) When the need for the lands or the materials acquired under this subpart no longer exists, notice of that fact must be given by the SHD to the FHWA and to the concerned Federal agency, and such lands or materials will revert to the control of the Federal agency from which they were appropriated or to its assigns. The notice, in a form suitable for recording, shall state that the need for the lands or materials no longer exists for the purposes for which acquired.

[39 FR 32604, Sept. 10, 1974; 39 FR 33797, Sept. 20, 1974, as amended at 40 FR 2179, Jan. 10, 1975]

#### § 712.504 Direct Federal acquisition.

(a) Title 23 U.S.C. 101(a), 107, and 210(e) authorize Federal acquisition of lands and interests in lands for any project authorized for Interstate, defense Access or Forest highways where the State is unable to acquire the required rights-of-way or it is unable to obtain possession with sufficient promptness.

(b) To enable the FHWA to make the necessary findings to proceed with the acquisition of the rights-of-way, the SHD's written application for Federal acquisition shall include:

(1) Justification for the Federal acquisition of the lands or interests in lands;

(2) The date FHWA authorized the SHD to commence right-of-way acquisition, the date the project was advanced to Stage 2 program status, the date of the project agreement and a statement that the agreement contains the provisions required by sec-

tions 108(a), 108(b), and 111 of Title 23, U.S.C.;

(3) The necessity for acquisition of the particular lands under request;

(4) A statement of the specific interests in lands to be acquired, including the proposed treatment of control and access;

(5) The SHD's intentions with respect to the acquisition, subordination or exclusion of outstanding interests such as minerals and utility easements, in connection with the proposed acquisition;

(6) A statement on compliance with the provisions of Part 771 of this chapter;

(7) Adequate legal description, plats, appraisals, and title data;

(8) An outline of the negotiations which have been conducted by the agency with landowners;

(9) An agreement that the SHD will pay its pro rata share of costs, including but not limited to those set forth in § 712.504(f) incurred in the acquisition of, or the attempt to acquire rights-of-way; and

(10) A statement that assures compliance with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.).

(c) If the landowner tenders a right-of-entry at any time before the FHWA makes a determination that the SHD is unable to acquire the rights-of-way with sufficient promptness, the SHD is legally obligated to accept such tender and the FHWA may not proceed with Federal acquisition.

(d) If the SHD obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify the FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (ex parte) from the proceeding and the estimated just compensation deposited into the registry of the Court for the affected parcel be withdrawn after the appropriate motions are approved by the Court.

(e) When the United States obtains a court order granting possession of the real property, the FHWA shall authorize the SHD to take over supervision of the property. The authorization

on shall include, but need not be limited to, the following:

- (1) The right to take possession of occupied properties;
  - (2) The right to give 90 days notice to owners to vacate occupied properties and the right to take possession of such properties when vacated;
  - (3) The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, if appropriate, to protect the public interest;
  - (4) The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner declines to comply with the court order of possession;
  - (5) The right to clear improvements and other obstructions;
  - (6) Instructions that the U.S. Attorney be notified prior to actual clearing, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the case for trial;
  - (7) The requirement for appropriate credits to the United States for any salvage or net rentals obtained by the State, as in the case of right-of-way acquired by the State for Federal projects; and
  - (8) Instructions that the authority intended to the SHD is not intended to exclude the U.S. Attorney from taking action, before the SHD has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.
- f) If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal Court and the final judgment is that the Federal agency cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property as will in the opinion of the court reimburse him for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually

incurred because of the condemnation proceedings.

(g) As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, the FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.

(h) The lands or interests in lands, acquired under these provisions, will be conveyed to the State or the appropriate political subdivision thereof, upon agreement by the SHD, or said subdivision to:

(1) Maintain control of access where applicable;

(2) Accept title thereto;

(3) Maintain the project constructed thereon;

(4) Abide by any conditions which may be set forth in the deed; and

(5) Notify FHWA at the appropriate time that all the conditions have been performed by the State.

(i) The Deed from the United States to the State, or to the appropriate political subdivision thereof, shall include the conditions required by 49 CFR Part 21. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.

[39 FR 32604, Sept. 10, 1974, as amended at 41 FR 9321, Mar. 4, 1976]

#### APPENDIX 1—APPLICATION FOR FEDERAL LAND TRANSFERS

(1) *Preparation of Application.* The State's application, referenced in § 712.503, shall include or be accompanied by the following information:

(a) The purpose for which the lands are to be used.

(b) The estate or interest in the land required by State statute.

(c) The Federal-aid project number.

(d) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land.

(e) A commitment to construct the highway on or to remove materials from the lands to be transferred within a period of not more than 10 years following the transfer of the lands to the State.

(f) A map showing the survey of the lands to be acquired.

(g) A legal description of the lands desired.

(h) A statement on compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, et seq.), the Historic Preservation Act (16 U.S.C. 470(f)), and with provisions for Preservation of Parklands (49 U.S.C. 1653(f)), if applicable.

(2) *Submission of application.* The application referenced in § 712.503 shall be submitted to FHWA, except as otherwise prescribed herein. Certain Federal agencies have special legislation for granting rights-of-way over lands under their jurisdictions and may proceed under their own laws. In those cases, the SHD should file its application directly with the Federal agency. Although they have special authority, the Federal agencies sometimes wish to proceed under 23 U.S.C. 107(d) and 317 and, in such cases, the application should be filed with the FHWA. The agencies having special authority which would permit the State to file its application directly are as follows:

(a) *Bureau of Indian Affairs.* Application should be submitted directly to the Bureau of Indian Affairs, Washington, D.C., for rights-of-way across tribal lands or individually owned lands held in trust by the United States or encumbered by Federal restrictions. All other lands held by the Bureau of Indian Affairs are transferred under 23 U.S.C. 107(d) and 317.

(b) *Army or Air Force.* State should submit its application directly to the installation commander and the appropriate District Engineer, Corps of Engineers, Department of the Army.

(c) *Navy.* State should submit its application directly to the District Public Works Officer of the Naval District involved.

(d) *Veterans Administration.* State should submit its application directly to the Director, Veterans Administration, Washington, D.C.

## Subpart F—Functional Replacement of Real Property in Public Ownership

**AUTHORITY:** 23 U.S.C. 315; 42 U.S.C. 449 CFR 1.48(b).

**SOURCE:** 39 FR 33312, Sept. 17, 1964, unless otherwise noted.

### § 712.601 Purpose.

This regulation prescribes Federal Highway Administration (FHWA) policies on functional replacement real property in public ownership.

### § 712.602 Applicability.

The provisions of this regulation, applicable, to the extent practicable, under State law, to all States and political subdivisions thereof that require real property for any highway highway related project in which Federal funds will participate in any part of the right-of-way costs of the project. The provisions of this regulation do not apply to real property owned by utilities or railroads.

### § 712.603 Federal Lands.

Acquisition of real property in Federal ownership shall be in accordance with FHWA regulations on Federal land transfers in 23 CFR 712.507 seq.

### § 712.604 Functional replacement.

(a) Where the State highway department (SHD) so requests, and can, pursuant to State law, incur costs for functional replacement of real property in public ownership, Federal funds may participate in such replacement costs provided that it is demonstrated and FHWA concurs, that functional replacement is in the public interest. Application of functional replacement procedures is at the SHD's election subject to FHWA approval of a SHD request.

(b) For the purpose of this regulation, functional replacement is defined as the replacement of real property either lands or facilities, or both, as required as a result of a highway or highway related project with lands or facilities, or both, which will provide equivalent utility.

(e) Application of this policy, and Federal participation in costs pursuant hereto require that:

- 1) The property to be functionally replaced is in public ownership,
- 2) State law permits the incurrence of functional replacement costs,
- 3) FHWA has concurred that functional replacement is in the public interest,
- 4) FHWA has granted authorization to proceed on such basis prior to incurrence of costs,
- 5) The functional replacement actually takes place, and the costs of replacement are actually incurred, and
- 6) Replacement sites and construction are in compliance with existing rules, laws, and zoning regulations for the area in which the facility is located.

**§ 712.605 Federal participation.**

(a) Federal funds may participate in functional replacement costs on the following basis:

- 1) The actual functional replacement cost of the facilities required to be replaced, and
  - 2) The appraised current fair market value of the land to be acquired for highway purposes when the owning agency has land on which to locate the facilities, or the reasonable costs of acquiring a functionally equivalent substitute site where lands of the same public ownership are not available or suitable.
- (b) Costs of increases in capacity and other betterments are not eligible for Federal participation except those necessary to replace utility; those required by existing codes, laws, and zoning regulations; and those related to reasonable prevailing standards for the type of facility being replaced.

(c) Where it is found that the appraised fair market value of the property to be acquired exceeds the cost of functional replacement, Federal funds may participate in the fair market value amount.

**§ 712.606 Procedures.**

(a) During the early stages of project development, SHD officials should meet with the owning agency to discuss the effect of a possible acquisition and potential application of

functional replacement procedures. The results of discussions and decisions concerning functional replacement should be included in negative declarations and environmental impact and section 4(f) statements if required on a project.

(b) At the earliest practicable time, the SHD shall have the property appraised and establish an amount it believes to be just compensation, and shall advise the owning agency of the amount established. Subject to the requirements of this regulation, the owning agency has the option of accepting the amount of compensation established by the appraisal process or accepting functional replacement. The owning agency may waive its right to have an estimate of compensation established by the appraisal process if it prefers functional replacement.

(c) If the owning agency desires functional replacement, it should initiate a formal request to the SHD, and fully explain why it would be in the public interest.

(d) If the SHD agrees that functional replacement is necessary and in the public interest, it must submit a specific request for FHWA concurrence. The request should include:

- (1) Cost estimate data relative to contemplated solutions,
- (2) Agreements reached at meetings between the SHD and the owning agency, and
- (3) An explanation of the basis for its request.

The request shall include a statement that replacement property will be acquired in accordance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and applicable FHWA regulations.

(e) After concurrence by FHWA that functional replacement is in the public interest, FHWA may, at SHD request, authorize the SHD to proceed with the acquisition of the substitute site and to proceed with physical construction of minor structures, or, in the case of major improvements, to proceed with development of detailed plans, specifications and estimates.

(f) The plans, specifications, and estimates, and modifications thereof,

shall be submitted to FHWA for review and approval in accordance with established procedures. Where major improvements are involved, advertising for bids and letting of the contract to construct the replacement facility may follow the general procedures utilized by the owning agency, if acceptable to the SHD and FHWA. The submission, where applicable, shall include provisions for SHD inspection during construction of the replacement facility.

(g) Prior to FHWA concurrence in the award for actual construction, an agreement shall be entered into setting forth the rights, obligations and duties of each party with regard to the facility being acquired, the acquisition of the replacement site, and the construction of the replacement facility. The executed agreement shall also set forth how the costs of the new facility are to be shared between the parties.

(h) The SHD's request for final payment shall include:

(1) A statement signed by an appropriate official of the owning agency and the SHD certifying that the cost of the replacement facility has actually been incurred in accordance with the provisions of the executed agreement.

(2) The statement shall also certify that a final inspection of the facility was made by the SHD and owning agency and that the SHD is released from any further responsibility.

### Subpart G—Right-of-Way Revolving Fund

**AUTHORITY:** 23 U.S.C. 108(c) and 315; 49 CFR 1.48(b); 23 CFR 1.32; secs. 7 (c), (d), and (e) of the Federal-Aid Highway Act of 1968 (82 Stat. 819); (42 U.S.C. 4626).

#### § 712.701 Purpose.

To prescribe Federal Highway Administration (FHWA) policy and procedure for the advance acquisition of rights-of-way using the right-of-way revolving fund established under 23 U.S.C. 108(c).

[39 FR 26421, July 19, 1974. Redesignated at 39 FR 28629, Aug. 9, 1974]

#### § 712.702 Policies.

(a) A revolving fund has been established for the purpose of acquiring rights-of-way for future construction of highways on any Federal-aid system.

(b) The funds advanced may be used to pay the entire costs (State and Federal share) of projects for the acquisition of rights-of-way, including relocating and relocation payments at last resort housing, utility relocation and the net cost to the State of property management. Advancement of cash, repayment of cash, and accounting requirements shall be in accordance with 23 CFR Part 130 Subpart C.

(c) Revolving funds and obligation authority will be allocated by FHWA to individual projects on a need-and-ability-to-use basis.

(d) Actual construction of a highway on rights-of-way, with respect to which revolving funds are advanced, shall be commenced within a period not less than 2 years nor more than 5 years following the end of the fiscal year in which the advance of funds made to the right-of-way project, unless FHWA in its discretion shall provide an earlier or later termination date.

[39 FR 26421, July 19, 1974. Redesignated at 39 FR 28629, Aug. 9, 1974, and amended at 41 FR 9321, Mar. 4, 1976; 41 FR 24347, J. 16, 1976]

#### § 712.703 Procedures.

(a) When a State highway department has a project it wishes to fund from the revolving fund or additional funds are needed for an existing revolving fund project, a letter asking for allocation of funds shall be submitted to FHWA.

(b) If funds are available, FHWA will allocate them to a specific project and authorize obligation of such funds.

(c) After the State has been advised of fund allocation, the project shall be programmed, and right-of-way work shall be authorized by FHWA under regular Federal-aid procedures. Each regular project prefix number shall be preceded by the letter Q. The FHWA letter of authorization to proceed shall constitute an obligation of the right-

f-way revolving fund. Revolving fund projects are subject to environmental, location, and design requirements in the same manner as regular Federal-aid projects.

(d) All right-of-way work on revolving fund projects shall be accomplished in accordance with procedures and requirements applicable to regular Federal-aid projects.

(e) If situations should develop which prevent work from progressing on individual right-of-way revolving fund projects in a timely manner, the State shall notify FHWA so that the Federal authority may be withdrawn.

FR 26421, July 19, 1974. Redesignated at FR 28629, Aug. 9, 1974, and amended at FR 10530, Mar. 11, 1982]

## Subpart H—Land Service Facilities

**AUTHORITY:** 23 U.S.C. 315, 108(a) and 114; 49 CFR 1.48(b).

**SOURCE:** 42 FR 8, Jan. 3, 1977, unless otherwise noted.

### 2.801 Purpose.

The purpose of this regulation is to establish policy guidelines within the right-of-way acquisition process for Federal participation in the costs of land service facilities designed to provide or restore access to properties affected by a highway facility.

### 2.803 Applicability.

The provisions of this regulation apply where Federal funds are participating in any part of the cost of a highway project.

### 2.805 Policies.

(a) **General.** (1) The construction of highways occasionally changes access conditions in a manner which may seriously inconvenience the general public as well as the private property owner. Land service facilities such as private roads, frontage roads, side-roads, and pedestrian separations, and combination drainage and vehicular or truck passes may be incorporated into the highway design in order to reduce the disruptive effect the highway may have on a particular community, on recreational activities and wildlife, or

on the operation of a farm, ranch, or other business which the highway location severs.

(2) Whenever practicable, land service facilities should be designed and located to service more than one property or purpose. Whenever land service facilities are provided to serve more than one property owner, the rights of each owner to use the facility must be granted in a recordable legal instrument.

(3) Efforts should be made to utilize or extend existing land service facility structures to the extent appropriate. Where there are existing facilities over or under a Federal-aid highway, Federal funds may participate in the construction of similar land service facilities to cross added parallel lanes provided land use and land use patterns have not changed in a manner which diminishes the need for such a facility.

(b) **Public use and benefit.** (1) The construction of land service facilities which are designed for public use, or to provide access for multiple landowners shall be justified as a part of the normal design development process.

(2) Justification for incorporating land service facilities designed for public use into the highway design includes, but is not limited to considerations such as: highway safety, access to recreation areas, police and fire protection, preservation or enhancement of area economy, equitable treatment of property owners, servicing utility facilities, restoration of local vehicular or animal circulation, conservation and development of natural resources (including wildlife) and other environmental considerations.

(c) **Private use and benefit.** (1) Land service facilities designed for restoration of access to and within a privately owned property shall be justified primarily on the basis of economics. In exceptional cases where the land service facility is not justified economically, but it is believed that access is nevertheless in the public interest, the recommendation and justification for perpetuation to access are to be submitted to the FHWA for prior consideration.



(2) The actual cost of providing a land service facility to cross under or over a highway may vary widely, depending on the type and width of the highways to be built. A common cost basis may be used for comparative purposes in determining mitigation of damages to a property in these cases. The basis may apply regardless of the actual cost of the proposed structure. The basic economic formula consists of the following computations:

(i) Based on substantiated before-and-after estimates, determine the difference between the current fair market value of the property without the proposed facility and the current fair market value with the proposed facility.

(ii) The difference determined in paragraph (c)(2)(i) of this section would then be compared with the current estimated construction costs of a land service facility required to cross over or under a hypothetical two-lane highway calculated in accordance with the following criteria:

(A) The structural elements of the cross section of the structure are to be the State's design standard or typical section for the specific service to be provided, and

(B) For comparison purposes only, the dimensions of the cross section elements used to establish the maximum length of overcrossing or undercrossing structure will be those provided for in the State's minimum design standards for the particular highway class, with the following limitations: pavement width shall not exceed 24 feet ( $\pm 7.32$  metres), shoulder width 10 feet ( $\pm 3.05$  metres), depth of cover 8 feet ( $\pm 2.44$  metres), and fill slopes not to be flatter than 2:1.

(iii) Generally, if the hypothetical construction costs calculated according to paragraph (c)(2)(ii) (A) and (B) of this section exceed the difference determined in paragraph (c)(2)(i) of this section, the proposed land service facility cannot be considered to be economically justified.

(3) When proposed highway structures which have been determined to be necessary under applicable design standards are modified for combination highway and private use as a land service facility, the structure costs to

be utilized in the economic comparison should not include those costs required to meet the highway design needs.

(4) Participation in private use land service facilities is based on the inclusion of a right-of-way item in an approved Federal-aid program as defined in Part 630, Subpart A, of this chapter. Land service facilities designed for private use and benefit may be included in a construction project as a right-of-way item of cost.

(5) Federal funds may participate in payments made to the property owner based upon the appraised value without the land service facility. Federal funds shall not participate in the payment to the property owner of the estimated construction costs of a land service facility justified under this regulation in lieu of the actual construction of such a facility.

## PART 713—RIGHT-OF-WAY—PROPERTY MANAGEMENT FUNCTION

### Subpart A—Property Management

#### Sec.

- 713.101 Purpose.
- 713.102 Applicability.
- 713.103 Policies and procedures.

### Subpart B—Management of Airspace

- 713.201 Purpose.
- 713.202 Applicability.
- 713.203 Definition.
- 713.204 Policies.
- 713.205 Inventory.

### Subpart C—Disposal of Rights-of-Way

- 713.301 Purpose.
- 713.302 Applicability.
- 713.303 Definitions.
- 713.304 General requirements.
- 713.305 Application for approval.
- 713.306 Excess right-of-way resulting from plan changes.
- 713.307 Credit to Federal funds.
- 713.308 Uneconomic remnants.

SOURCE: 39 FR 34651, Sept. 27, 1974, unless otherwise noted.

### Subpart A—Property Management

AUTHORITY: 23 U.S.C. 315; 42 U.S.C. 4651 and 4651(6); 23 CFR 1.32; and 49 CFR 1.4(b).

**713.101 Purpose.**

This subpart prescribes Federal Highway Administration (FHWA) policies and procedures for the management of real property acquired in connection with Federal-aid highway projects.

**713.102 Applicability.**

The policies in § 713.103 are applicable to all State and political subdivisions thereof that manage real property acquired for any highway or highway-related project in which Federal funds will participate in any part of right-of-way costs of the project. States are encouraged to adopt these procedures for all projects in which Federal funds will participate in any part of the project. Section 713.103(b) is applicable to the greatest extent practicable under State law, to all projects in which Federal funds will participate in any part of the cost of the project.

**713.103 Policies and procedures.**

(D) The State highway department shall establish property management policies and procedures that assure control and administration of lands and improvements acquired for right-of-way purposes. These procedures shall establish:

(1) Property records showing:

- i) An inventory of all improvements acquired as a part of the right-of-way;
- ii) An accounting of the property management expenses and the rental payments received; and
- iii) An accounting of the disposition of improvements and the recovery of payments received.

(2) Methods for accomplishing the clearing of right-of-way when such clearance is performed separately from the contract for the physical construction of the project.

(3) The methods for managing the rent control program.

(4) The methods for employing private firms or public agencies for the management of real property.

(5) The methods for accomplishing the disposition of improvements through resale, salvage, owner retention, or other means.

(b) If the acquiring agency permits the owner or tenant to occupy the real

property acquired on a rental basis for a short term or for a period subject to termination by the agency on short notice, the amount of rental required shall not exceed the fair rental value of the property to a short term occupier.

(c) Property management activities shall be handled in a manner consistent with the public interest and designed to reflect the maximum long-range public benefit.

(d) The acquiring agency is responsible for the preservation of the improvements and for reasonable safety measures when it has acquired ownership and possession of the property.

(e) Clearing acquired improvements under a clearing contract is considered:

(1) A right-of-way item when the clearing is performed separately from the contract for physical construction. The applicability of the provisions of Volume 6, Chapter 4, of the Federal-Aid Highway Program Manual<sup>1</sup> shall be determined in accordance with the criteria set forth for the requirement of wage determinations in the FHWA Labor Compliance Manual.<sup>2</sup>

(2) A construction item within the provisions of Volume 6, Chapter 4, of the Federal-Aid Highway Program Manual<sup>2</sup> when the clearing is performed as a part of the physical construction contract.

(f) Rodent control procedures shall assure that the acquiring agency:

(1) Determines and documents the need for extermination services through periodic field inspections.

(2) Coordinates with other interested agencies, such as State, county, and city health departments, and

(3) Completes required extermination measures prior to demolition or removal of improvements.

(g) Acquired rights-of-way shall be maintained in a manner which will prevent or correct problems such as il-

<sup>1</sup>The Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration; 400 7th Street SW., Washington, D.C. 20590.

<sup>2</sup>The FHWA Labor Compliance Manual may be examined at the Federal Highway Administration; 400 7th Street SW., Washington, D.C. 20590.

legal dumping or disposal of rubble, debris, and garbage on cleared Federal-aid highway right-of-way until needed for construction.

(h) Where the acquired right-of-way includes areas for future construction, in addition to that required for immediate construction, the SHD may permit or lease the temporary use of this area until it is needed for highway purposes. The SHD may allow this temporary use when:

(1) The FHWA has approved temporary right-of-way limits within the overall right-of-way;

(2) The integrity and safety of the highway facility constructed elsewhere on the right-of-way are assured; and

(3) There is no decrease in the extent of access control to the highway facility constructed elsewhere on the right-of-way.

### Subpart B—Management of Airspace

**AUTHORITY:** 23 U.S.C. 142(g), 315; 23 CFR 1.23, 1.32; 49 CFR 1.48, Part 21.

#### § 713.201 Purpose.

To prescribe Federal Highway Administration (FHWA) policies relating to the management of airspace on Federal-aid highway systems for non-highway purposes.

#### § 713.202 Applicability.

(a) The provisions of this subpart apply to the use of airspace on the Federal-aid highway systems, except as provided in paragraph (b) of this section.

(b) This subpart does not apply to railroads and public utilities which cross or otherwise occupy Federal-aid highway rights-of-way, nor to relocations of railroads or utilities for which reimbursement is claimed under Subparts H and E of Part 140 of this chapter; joint development and multiple use of highway rights-of-way as covered in Volume 7, Chapter 7, section 8 of the Federal-Aid Highway Program Manual;<sup>3</sup> and bikeways and pedestrian

walkways as covered in part 652 of this chapter.

#### § 713.203 Definition.

Air space, as used in this subpart that space located above, at, or below the highway's established grade lying within the approved right-of-way limits.

#### § 713.204 Policies.

(a) Where a State highway department (SHD) has acquired sufficient legal right, title, and interest in right-of-way of a highway on a Federal-aid system to permit the use of certain airspace for nonhighway purposes, and where such airspace is required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility, the right to temporary permanent occupancy or use of airspace may be granted by the SHD subject to prior FHWA approval.

(b) The airspace required to accommodate foreseeable future expansion of the highway facility may not be used for nonhighway purposes except under the provisions of Subpart B, this part, relating to property management.

(c) In any case where sufficient rights-of-way of any Federal-aid highway system to accommodate new rail or nonhighway public mass transit facilities and where this can be accomplished without impairing automobile safety or future highway improvements, the FHWA may authorize SHD to make such lands and right-of-way available without charge to a publicly owned mass transit authority for such purposes whenever it may be determined that the public interest will be served thereby.

(d) If found to be consistent with highway designs, any portion of right-of-way may be used for green spaces, small parks, play areas, parking, other highway related public use, or for any other public or quasi-public use which would assist in integrating the highway into the local environment and enhancing other public supported programs. Normally, the SHD should retain supervision and

<sup>3</sup>The Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration, 400 7th Street SW., Washington, D.C. 20590.

diction over such lands but could enter into agreements with local political subdivisions relative thereto.

(7) An individual, company, organization, or public agency desiring to use airspace as defined herein shall submit application therefor to the SHD in manner and form deemed appropriate by the SHD. Applications, including a proposed airspace agreement, shall be forwarded to the FHWA together with SHD recommendations for approval and any necessary supplemental information. The submission shall affirmatively provide for adherence to all policy requirements contained in this subpart where such are appropriate to the intended use.

All nonhighway use of airspace shall be covered by a properly executed airspace agreement. The agreement shall contain the following:

The party responsible for developing and operating the airspace.

A general statement of the purpose.

The general design for the use of the space, including any facilities to be constructed, and such maps, plans, or sketches as are necessary to set out the features in relation to the facility.

A detailed three-dimensional description of the space to be used, and when the surface area beneath the highway structure or adjacent to a highway roadway is to be used for recreation, public park, beautification, parking of motor vehicles, mass transit facilities, and similar uses. In such cases, a plan and bounds description of the use area, together with appropriate plans or cross sections clearly defining the vertical use limits may be substituted in lieu of a three-dimensional description.

Provision that any significant change in the design or construction of the facility described in subsection 5f(3) shall receive prior approval by the SHD subject to concurrence by the FHWA.

Provision that any change in the authorized use of airspace shall require prior approval by the SHD subject to concurrence by the FHWA.

Provision that such airspace shall not be transferred, assigned, or con-

veyed to another party without prior SHD approval subject to concurrence by the FHWA.

(8) Provision that the agreement will be revocable in the event that the airspace facility ceases to be used or is abandoned.

(9) Provision for the agreement to be revoked if the agreement is violated and such violation is not corrected within a reasonable length of time after written notice of noncompliance has been given. Further, that in the event the agreement is revoked and the SHD deems it necessary to request the removal of the facility occupying the airspace, the removal shall be accomplished by the responsible party in a manner prescribed by the SHD at no cost to the FHWA. An exception to this provision is permitted when the improvements revert to the State upon termination of the agreement.

(10) When deemed necessary by the SHD or the FHWA, provision for adequate insurance by the responsible party for the payment of any damages which may occur during or after construction of the airspace facilities to hold the State harmless. Exception to this requirement may be made where the proposal is for the use by a public or quasi-public agency, when such agency is assigned the specific responsibility for payment of any related damages occurring to the highway facility and to the public for personal injury, loss of life, and property damage.

(11) Provision for the SHD and authorized FHWA representatives to enter the airspace facility for the purpose of inspection, maintenance, or reconstruction of the highway facility when necessary.

(12) Provision that the facility to occupy the airspace will be maintained so as to assure that the structures and the area within the highway right-of-way boundaries will be kept in good condition, both as to safety and appearance, and that such maintenance will be accomplished in a manner so as to cause no unreasonable interference with highway use. In the event the responsible party fails in its maintenance obligations, there will be provision for the SHD to enter the premises to perform such work.

(13) Appropriate provisions of Appendix "C" of the State's Civil Rights Assurances<sup>4</sup> with respect to Title VI of the Civil Rights Act of 1964 and 49 CFR Part 21.

(g) Use of air space beneath the established gradeline of the highway shall provide sufficient vertical and horizontal clearances for the construction, operation, maintenance, ventilation, and safety of the highway facility.

(h) The proposed use of airspace above the established gradeline of the highway shall not, at any point between two points established 15 feet beyond the two outer edges of the geometric section (highway prism) of the highway, extend below a horizontal plane which is at least 16 feet 4 inches above the gradeline of the highway, or the minimum vertical clearance plus 4 inches as approved by the State, except as necessary for columns, foundations or other support structures. Where control and directional signs needed for the highway are to be installed beneath an overhead structure, vertical clearance will be at least 20 feet from the gradeline of the highway to the lowest point of the soffit of the overhead structure. Exceptions to the lateral limits set forth above, when justified by the SHD, may be considered on an individual basis by the FHWA.

(i) Piers, columns, or any other portion of the airspace structure shall not be erected in a location which will interfere with visibility or reduce sight distance or in any other way interfere materially with the safety and free flow of traffic on the highway facility.

(j) The structural supports for the airspace facility shall be located to clear all horizontal and vertical dimensions established by the SHD. Supports shall be clear of the shoulder or safety walks of the outer roadway. However, supports may be located in the median or outer separation when the SHD determines and the FHWA concurs that such medians and outer

separations are of sufficient width. Supports are to be back of or flush with the face of any wall at the site location. Supports shall be adequately protected by means acceptable to SHD and the FHWA. No support shall be located in the ramp gore in a position so as to interfere with signing necessary for the proper use of the ramp.

(k) The use of airspace shall result in either highway or nonhighway users being unduly exposed to hazardous conditions because of location, design, maintenance, or operation features.

(l) Appropriate safety precautions and features necessary to minimize the possibility of injury to users of either the highway facility or airspace due to traffic accidents occurring on the highway or accidents resulting from nonhighway uses shall be provided. Airspace facilities shall not be used for construction over or under the highways, unless the plans therefor contain adequate provisions acceptable to the SHD and the FHWA for evacuation of the structures or facilities in case of a major accident endangering the occupants of such structures or facilities.

(m) Any airspace facility shall be fire resistant in accordance with provisions of the local applicable building codes found to be acceptable by the SHD and the FHWA. Such space facility shall not be used for manufacture or storage of flammable, explosive, or hazardous materials or any occupation which is deemed by the SHD or the FHWA to be a hazard to highway or nonhighway users. Provisions involving the construction improvements in airspace should be approved by the State authority responsible for fire protection standards. In cases where the SHD or the FHWA questions the acceptability of the existing code, conformance with a nationally accepted model building code will be required.

(n) No structure or structures over a highway facility shall occupy more length of the highway than is permitted by the SHD. Structures shall permit adequate natural ventilation of the enclosed section of the highway for the conditions at the location, assuming a volume of traffic equal to

<sup>4</sup>Appendix "C" of the State's Civil Rights Assurances may be examined at any office of the State Highway Department or at the Federal Highway Administration, 400 7th Street SW., Washington, D.C. 20590.

ity. Each such covered length shall be preceded and followed by uncovered lengths of highway that will not affect natural ventilation. The SHD shall determine such lengths for each particular case, subject to FHWA concurrence. Exceptions may be considered when complete tunnel ventilation is provided. Unless tunnel ventilation is provided, structures over highways shall be so designed and constructed as to facilitate natural ventilation of the highway. To this end, the outside and any supports for such structures shall have smooth and cleanable surfaces. Supports for structures shall leave as much space on the sides of the highway as feasible. Such space shall be appropriately graded where deemed necessary or desirable by the SHD.

The design, occupancy, and use of any structure over or under a highway facility shall be such that neither use, safety, appearance, nor the movement of the highway will be adversely affected by fumes, vapors, drippings, droppings, or discharges of any kind therefrom.

On-premise signs, displays, or devices may be erected on structures occupying highway airspace, but shall be limited to those indicating owner-ship and type of on-premise activities. Such shall be subject to regulation by the SHD and the FHWA with respect to number, size, location, and design.

Construction of any structure above or below a highway facility shall require any temporary or permanent change in alignment or profile of existing highway without prior approval by the SHD and the FHWA.

Where either the SHD or the FHWA is of the opinion that the proper use of airspace requires changes in additions to existing highway facilities for the proper operation and maintenance of highways, such facilities shall be provided without cost to Federal funds. There may be exceptions to this policy when the proposed use is for highway related or other public or quasi-public use which would not be in integrating the highway into the local environment and enhance other publicly supported programs. This provision is not intended to override existing limitations upon ex-

penditures from the highway trust fund, nor is it intended to conflict with the provisions of Volume 7, Chapter 7, section 8, of the Federal-Aid Highway Program Manual,<sup>4</sup> relating to joint development of highway corridors and multiple use of roadway properties.

(s) Proposed airspace facilities shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance, and reconstruction when necessary.

(t) Permission shall not be granted for any use of airspace which does not conform with the provisions of current, appropriate Federal Aviation Administration regulations.

(u) Approval for the use and occupancy of highway right-of-way for the parking of motor vehicles shall be granted only if proper consideration has been given to the need for the following:

(1) Parking design or arrangement to assure orderly and functional parking.

(2) Plantings or other screening measures to improve the esthetics and appearance of the area.

(3) Surfacing, lighting, fencing, striping, curbs, wheel stops, pier protection devices, etc.

(4) Access for fire protection and fire fighting equipment.

(v) Disposition of income received from the authorized use of airspace shall be the SHD's responsibility and credit to Federal funds is not required.

#### § 713.205 Inventory.

The SHD shall maintain an inventory of all authorized uses of airspace. This inventory which shall be available for review by appropriate Federal and State agencies shall include but not be limited to the following items for each authorized use of airspace:

(a) Location by project, survey station, or other appropriate method.

(b) Identification of the authorized user of the airspace.

<sup>4</sup>The Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration; 400 7th Street SW., Washington, D.C. 20590.

(c) A three-dimensional description or a metes and bounds description.

(d) As-built construction plans of the highway facility at the location where the use of airspace was authorized.

(e) Pertinent construction plans of the facility authorized to occupy the airspace.

(f) A copy of the executed airspace agreement.

### Subpart C—Disposal of Rights-of-Way

**AUTHORITY:** 23 U.S.C. 315 and 319; 23 CFR 1.32; 42 U.S.C. 4651(9); 49 U.S.C. 1653(f); 49 CFR 1.48(b); and 49 CFR Part 21, unless otherwise noted.

#### § 713.301 Purpose.

This subpart prescribes Federal Highway Administration (FHWA) policies and procedures for disposal of portions of highway rights-of-way no longer needed for highway purposes.

#### § 713.302 Applicability.

(a) The provisions of this subpart apply to disposals of rights-of-way where Federal-aid highway funds have participated in either the right-of-way or physical construction costs of a project.

(b) The provisions of this subpart do not apply to the matters covered in Part 620, Subpart B of this chapter.

(1) Where a section of highway including the right-of-way is abandoned;

(2) Where only changes in access control are involved; and

(3) To relinquishments of highway facilities for continued use for highway purposes.

(c) The provisions of this section do not apply:

(1) Where whole sections of the Interstate System are withdrawn under the provisions of 23 U.S.C. 103(e)(2) and (4), or

(2) Where real property has been acquired for planned highway purposes, but because of environmental concerns, widespread public objections, or other similar considerations, the State highway department (SHD) or other appropriate State authority determines not to construct the planned highway facility.

[39 FR 34651, Sept. 27, 1974, as amended 40 FR 3767, Jan. 24, 1975; 41 FR 9321, M. 4, 1976]

#### § 713.303 Definitions.

For purposes of this subpart the following definitions apply:

(a) **Disposal.** The conveyance uses other than for highways of needed portions of highway rights way (in contrast to relinquishment which is the conveyance of a portion of a highway right-of-way or facility by a State highway department (SHD) to another government agency highway use).

(b) **Final acceptance.** (1) On Federal-aid construction projects, the date acceptance of the physical construction by FHWA; and

(2) On Federal-aid right-of-way projects, where there is no Federal-aid construction, the date the FHWA terminates to be the date of completion of the acquisition of the right-of-way authorized by FHWA to be acquired for the project.

#### § 713.304 General requirements.

(a) The conveyance may be to a public entity or private party.

(b) When disposal of unneeded portions of highway rights-of-way involves a change in the access control provisions of Part 620, Subpart B of this chapter also apply.

(c) Federal, State and local construction, recreation, park, or other appropriate agencies shall be afforded opportunity to acquire by purchase donation in accordance with the State law, tracts of right-of-way being considered for disposal when there is indication that such tracts have a present or potential use for parks, construction, recreational or related purposes. The SHD shall notify the appropriate agencies of its intention to dispose of unneeded portions of right-of-way which it considers to have present potential use for the aforementioned purposes.

(d) Lands or interests therein shall not be disposed of if they are suitable for retention in order to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the highway.

(a) When right-of-way which has been acquired with Federal-aid participation is disposed of without requiring credit to Federal funds, the instrument of conveyance shall contain appropriate provisions of "Appendix C" of the State's Title VI Civil Rights Assurance with respect to the Civil Rights Act of 1964, and the Department of Transportation Regulations (49 CFR Part 21).

R 34651, Sept. 27, 1974, as amended at R 3321, Mar. 4, 1976]

**§ 713.307 Application for approval.**

A SHD shall submit a request to FHWA for prior approval to dispose of any right-of-way when the determination that the property is no longer needed for highway purposes is made after:

Final acceptance of a Federal-aid highway construction project, where Federal funds have participated in the cost of right-of-way and construction costs, or construction costs only; or

Final acceptance of a right-of-way acquisition project where Federal-aid highway funds do not participate in the cost of the physical construction.

The request shall include:

An explanation of why the right-of-way is not needed; and

A plan which identifies the right-of-way proposed for disposition in relation to construction features and to existing right-of-way.

**§ 713.307 Excess right-of-way resulting from plan changes.**

Prior to final acceptance of a project, a portion of the right-of-way authorized by FHWA and acquired by the SHD may become unnecessary for the highway project. The unneeded portion usually results from plan changes. Right-of-way authorized and reserved to a natural boundary, but incorporated into the right-of-way at the time of final acceptance of the project, is considered to be in the status of a plan change.

Appendix "C" of the State's Civil Rights Assurance may be examined at any office of the State Highway Department or at the Federal Highway Administration; 400 7th Street, SW; Washington, D.C. 20590.

(b) When the plan change results in excess right-of-way, a separate request for prior approval of disposal need not be submitted.

(c) Where credit to Federal funds is required in accordance with § 713.307 and the determination as to the unneeded right-of-way is made prior to final acceptance of the project, the disposal shall be accomplished prior to submission of the final voucher for the project or not later than 2 years from the time the highway facility is opened to traffic, whichever is earlier. However, prior to expiration of the specified time period, the SHD may request and the FHWA may approve an extension of the time. If the property is not sold within the approved time limit, the cost of acquisition of the unneeded portion must be credited to the project if Federal reimbursement has been made therefor.

**§ 713.307 Credit to Federal funds.**

(a) When right-of-way is disposed of to another governmental agency for public use, FHWA does not require a charge to the agency and no credit to Federal funds is required. If, for any reason, there is a payment to the State for the land transferred and Federal funds participated in the cost of acquisition of the right-of-way, the amount received shall be credited to Federal funds at the same pro rata share as Federal funds participated in the cost of acquisition of the right-of-way.

(b) If the disposal is to a part other than a Federal, State, or local governmental agency for public use, and Federal funds participated in the cost of acquisition of the right-of-way, there shall be a credit to Federal funds at the same pro rata share as Federal funds participated in the cost of acquisition of the right-of-way. The amount credited shall be the result of disposal by one of the following means:

- (1) Public sale; or
- (2) Negotiations based on current appraised fair market value.

(c) When a credit to Federal funds is required, the cost of disposition may be deducted from the sales price.



§ 713.308 Uneconomic remnants.

(a) An uneconomic remnant incorporated within the right-of-way limits loses its identity and becomes part of the right-of-way. Should it no longer be needed for highway purposes, disposal of the area would be in the same manner as any other portion of highway rights-of-way.

(b) When the uneconomic remnant is not incorporated within the approved right-of-way limits, no FHWA approval to dispose of it is required. Upon disposal of such remnant, a credit to Federal funds is required in accordance with the provisions of § 713.307 of this part.

(23 U.S.C. 315; 23 CFR 1.32; 42 U.S.C. 4651(9); 49 CFR 1.48(b); OMB Circular A-102, Attachment N dated Aug. 24, 1977)

[39 FR 34651, Sept. 27, 1974, as amended at 44 FR 73019, Dec. 17, 1979]

## PART 720—APPRAISAL

### Subpart A—[Reserved]

### Subpart B—The Appraisal Function

#### Sec.

720.200 Policy.

720.201 Appraisal and specialty reports.

720.202 Review of appraisal and specialty reports.

720.203 Qualifications of appraisers and reviewing appraisers.

720.204 Appraisal fees, contracts, and agreements.

### Subpart A—[Reserved]

### Subpart B—The Appraisal Function

AUTHORITY: 23 U.S.C. 315, 42 U.S.C. 4633, 23 CFR 1.32.

#### § 720.200 Policy.

(a) *Purpose.* This section prescribes Federal Highway Administration policies related to the appraisal function.

(b) *Applicability.* The policies of this section are applicable, to the greatest extent practicable under State law, to all States and political subdivisions thereof that appraise or obtain appraisals of real property for any highway or highway related project in which Federal funds will participate in any part of the cost of the project.

(c) *Policies.* (1) Real property shall be appraised before the initiation of negotiations with an owner.

(2) The owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(3) The acquiring agency shall establish an amount which it believes to be just compensation for the acquisition of real property before the initiation of negotiations with an owner.

(4) Any decrease or increase in fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property.

(5) Appraisers shall not give consideration to nor include in their appraisals any allowance for relocation assistance benefits.

[38 FR 31828, Nov. 19, 1973]

#### § 720.201 Appraisal and specialty reports

(a) *Purpose.* This section prescribes Federal Highway Administration (FHWA) standards and requires for the preparation of appraisal and specialty reports of real property needed for highway and related purposes. The purpose of the requirements is to obtain uniformity in the requisite elements of any and all appraisal reports while providing sufficient latitude for additional elements of an appraisal report to be determined by the complexity of the appraisal problem.

(b) *Applicability.* (1) Except as provided in paragraph (b) (2) and (3) of this section, the provisions of this section are applicable, to the greatest extent practicable under State law, to all States and political subdivisions thereof when they obtain appraisal and specialty reports for any part of a highway related project in which Federal funds will participate in any part of the right-of-way costs of the project.

(b) The provisions of this section are applicable to those programs and projects specifically excluded by law by agreement with the FHWA.

(c) The provisions of this section are applicable to the appraisal of outdoor advertising signs and sites, junkyards, scenic easements except as provided by Subpart D of Part 750 and Part of this chapter.

**Number of reports.**—(1) *Appraisal reports.* When real property is to be acquired, the acquiring agency shall, before the initiation of negotiations, submit at least one appraisal report for each parcel to be acquired or damaged. For all but two reports shall be obtained for acquisitions for which the compensation for the acquisition can reasonably be expected to be in excess of \$50,000.

**Specialty reports.** When a separate valuation of machinery, equipment, or other specialty items is necessary, one report is required when the value of or compensation for the items to be acquired can reasonably be expected to be under \$50,000, and two reports are required when the same can reasonably be expected to exceed \$50,000.

**Exceptions.** The number of appraisal or specialty reports to be obtained on each parcel shall be as provided above except where the State has submitted a different plan of operation and it has been approved by the FHWA. Deviation from the States' approved plan of operation is permitted if the State has requested and received prior FHWA approval to obtain a greater or lesser number of reports for specific parcels or projects.

**Reimbursement.** (1) If otherwise provided, Federal funds may participate in the cost of appraisal and specialty reports obtained by the State in accordance with its accepted plan of operation. Federal funds may participate in the cost of additional appraisal or specialty reports when:

(a) Additional reports have been requested by FHWA.

(b) The State has requested and received prior FHWA approval for participation in the cost of additional reports.

Requests and approvals may be obtained for specific parcels or on a project by

project basis covering specific types of acquisitions.

(2) Where the State prescribes a minimum payment, not to exceed \$500, for the acquisition of a parcel, although the approved appraisal estimate of just compensation reflects a lesser or even a zero consideration, Federal participation shall be allowed if such payment is otherwise eligible.

(e) *Retention of reports.* A record copy of all appraisal and specialty reports shall be retained by the acquiring agency. Where correction or revision is necessary, the appraiser shall furnish corrected, revised or supplemental pages or portions of the report for attachment to the record copy. All copies except the record copy of the report may be returned to the appraiser for necessary corrections or revisions. Any request for a substantive correction or revision of an appraisal or specialty report shall be documented in the acquiring agency's files.

(f) *Appraisal reports.* (1) For FHWA purposes, an appraisal report is a written document which, as a minimum, contains the following:

(i) The purpose of the appraisal which includes a statement of value to be estimated and the rights or interests being appraised.

(ii) Identification of the property and its ownership.

(iii) Statement of appropriate contingent and limiting conditions, if any.

(iv) An adequate description of the neighborhood, the property, the portion of the property or interest therein being acquired, and the remainder(s), if any.

(v) Identified photographs of the subject property including all principal aboveground improvements or unusual features affecting the value of the property to be acquired or damaged.

(vi) An identification or listing of the buildings, structures, and other improvements on the land as well as the fixtures which the appraiser considered to be a part of the real property to be acquired.

(vii) The estimate of just compensation for or resulting from the acquisition. In the case of a partial acquisition, where appropriate, either in the report or in a separate statement, a

reasonable allocation of the estimate of just compensation for the real property to be acquired and for damages to remaining real property.

(viii) The data and analyses, or reference to same, to explain, substantiate and thereby document the estimate of just compensation.

(ix) The date(s) on which and/or as of which, as appropriate, the just compensation is estimated.

(x) The certification, signature, and date of signature of the appraiser.

(xi) Other descriptive material (maps, charts, plans, photographs).

(xii) The Federal-aid project number and parcel identification.

(2) Where an entire property is to be acquired, the estimate of just compensation would be the fair market value of the property. Where only a part of a property is to be acquired, the estimate of just compensation would be that amount arrived at in accordance with the laws governing just compensation applicable to the acquiring agency, including those laws governing compensable and noncompensable items and the treatment of general and special benefits.

(3) Appraisal reports shall be independently prepared by qualified staff or fee appraisers.

(4) Appraisal reports shall be prepared in ink or typewritten, dated and signed by the individual making the appraisal prior to being submitted to a review appraiser.

(5) Each appraisal report shall contain an appraiser's certification incorporating as a minimum the requirements in Appendix I to § 720.203. A new certificate shall be prepared where there is a change in the appraisal report which affects the estimate of just compensation or changes the date of valuation.

(6) In estimating just compensation for the acquisition of real property, appraisal reports shall, to the greatest extent practicable under State law, disregard any decreased or increase in the fair market value of the real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical dete-

rioration within the reasonable control of the owner.

(7) Documentation of estimates of value (either the before, the after the acquisition value), of damages and/or of benefits shall be by the most applicable and appropriate means available. If support for after value by the usual method market or income data or indicators from severance damage studies is feasible, the appraiser shall so state and explain why it is not feasible. In such instances, the appraiser shall then fully explain the reasoning for his after value estimate.

(g) *Specialty reports.* (1) For Federal purposes, a specialty report is a written document which, as a minimum, contains the following:

(i) Statement of purpose of report.

(ii) Definition of value(s) reported, i.e., fair market value, salvage value, etc.

(iii) Identification of the project and its ownership.

(iv) Statement of appropriate conditions and limiting conditions, if any.

(v) Identification of the value determined.

(vi) The estimate of value(s).

(vii) The data and analysis used to explain, substantiate and thereby document the estimate of value(s).

(viii) The date(s) on which and/or as of which the estimate of value was made.

(ix) The certification, signature, and date of signature of the specialist.

(x) Other descriptive material (maps, charts, plans, photographs).

(xi) The Federal-aid project number and parcel identification.

(2) Specialty reports shall be independently prepared by qualified staff or fee specialists.

(3) Specialty reports shall be prepared in ink or typewritten, dated and signed by the individual making the report prior to being submitted to a review appraiser or other specialist for review.

(4) Each specialty report shall contain a certification incorporating requirements similar to those in Appendix I to § 720.204. A new certificate shall be prepared where there is a change in the specialty report.

the estimate of value or the date of valuation.

R 31828, Nov. 19, 1973, as amended at R 9321, Mar. 4, 1976; 48 FR 31637, July 83]

## §2 Review of appraisal and special reports.

**Purpose.** This section prescribes the Highway Administration standards and requirements for review of appraisal and special reports of real property needed for highway and related purposes. The purpose of the requirements is to ensure that the approved estimate of compensation is reasonable and adequately supported.

**Applicability.** (1) Except as provided in paragraph (b)(2) of this section, the provisions of this section are applicable, to the greatest extent practicable, to the greatest extent practicable, to all States and political subdivisions thereof that they review appraisal and special reports for any parcel of real property for any highway or highway project in which Federal funds participate in any part of the life-cycle costs of the project. The provisions of this section are applicable to those programs and projects specifically excluded by law, agreement with the FHWA.

**Responsibility.** It is the responsibility of the appropriate acquiring agency to review all appraisal and special reports of real property to be acquired in connection with Federal-aid highway programs or projects and to determine an amount which it believes is just compensation for such acquisitions before the initiation of negotiations or the exercise of the power of eminent domain.

**Estimate of just compensation by reviewing appraiser.** Qualified reviewing appraisers shall establish the estimate of just compensation to be offered to an owner for the acquisition of real property. To the greatest extent practicable under State law, any decrease or increase in the fair market value of real property prior to the date of acquisition caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to

physical deterioration within the reasonable control of the owner, will be disregarded by the reviewing appraiser in establishing the compensation for the property. All estimates by a reviewing appraiser shall be documented and retained as a part of the project or parcel files.

(e) **Review of appraisal reports.** (1) The reviewing appraiser should field inspect the property appraised and the comparable sales considered by the appraiser(s) in arriving at either or both, as appropriate, the fair market value of the whole property and of the remainder(s). If a field inspection is not made, the file shall contain the reason(s).

(2) The reviewing appraiser shall examine the appraisal reports to determine that they:

(i) Are complete in accordance with § 720.201(f) and the State's appraisal specifications.

(ii) Follow accepted appraisal principles and techniques in the valuation of real property in accordance with existing State law.

(iii) Contain or make reference to the information necessary to explain, substantiate, and thereby document the conclusions and estimates of value and/or just compensation contained therein.

(iv) Include consideration of compensable items, damages and benefits, and do not include compensation for items noncompensable under State law.

(v) Contain an identification or listing of the buildings, structures and other improvements on the land as well as the fixtures which the appraiser considered to be a part of the real property to be acquired.

(vi) Contain the estimate of just compensation for or resulting from the acquisition and where appropriate, in the case of a partial acquisition, either in the report or in a separate statement, a reasonable allocation of the estimate of just compensation for the real property acquired and for damages to remaining real property.

(3) Prior to finalizing his estimate of just compensation the reviewing appraiser shall request and obtain corrections or revisions of appraisal reports which do not substantially meet

the requirements set forth in § 720.201(f) and in the State's appraisal report specifications. These shall be documented and retained in the parcel file.

(4) The reviewing appraiser shall initial and date his corrections and/or factual data supplements to an appraisal report.

(5) The reviewing appraiser shall place in the parcel file a signed and dated statement setting forth:

(i) His estimate of just compensation including, where appropriate, his allocation of compensation for the real property acquired and for damages to remaining real property, and an identification or listing of the buildings, structures and other improvements on the land as well as the fixtures which he considered to be a part of the real property to be acquired if such allocation or listing differs from that of the appraisal(s).

(ii) That as a part of the appraisal review there was or was not a field inspection of the parcel to be acquired and the comparable sales applicable thereto. If a field inspection was not made, he shall state the reason(s).

(iii) That he has no direct or indirect present or contemplated future personal interest in such property or in any monetary benefit from its acquisition.

(iv) That his estimate has been reached independently, without collaboration or direction, and is based on appraisals and other factual data.

(v) His value estimate of items compensable under State law but not eligible for Federal reimbursement, if any.

(f) *Review of specialty reports.* (1) When a separate valuation of machinery, equipment or other specialty items is required and when the acquiring agency has retained the specialist, it shall have his report reviewed by a reviewing appraiser or other specialist before its distribution to the fee or staff appraisers. The individual responsible for the review should field inspect the property. If a field inspection is not made, the file shall contain the reason(s).

(2) Before distribution to the appraisers, the reviewing appraiser or other specialist shall examine the reports to determine that they:

(i) Are complete in accordance with the requirements of § 720.201(g) and the State's own requirements.

(ii) Follow accepted principles and techniques for the valuation of subject of the report.

(iii) Contain the information necessary to explain, substantiate, thereby document the conclusions estimates of value contained therein.

(iv) Include consideration of compensable items and do not include compensation for items noncompensable under State law.

(3) Each acceptable estimate prepared by a specialist retained by the acquiring agency shall be made available to all appraisers for analysis and incorporation into their appraisals to the extent deemed appropriate by the individual appraiser.

(4) In those instances when a specialist has retained a specialist, the specialist's report incorporated in the specialist's review of his appraisal report, the review of the "package" shall be in accordance with the applicable review requirements of this section and those of the State.

[38 FR 31828, Nov. 19, 1973; 42 FR 11761, June 17, 1977]

#### § 720.203 Qualifications of appraisers and reviewing appraisers.

(a) *Purpose.* This section establishes criteria for determining the qualifications of appraisers and reviewing appraisers used by a State highway department or other political subdivision of a State on federally assisted highway programs and projects. It also requires a State highway department to establish procedures for the evaluation of the qualifications and performance of both fee and staff appraisers and reviewing appraisers.

(b) *Applicability.* (1) Except as provided in paragraph (b)(2) of this section, the provisions of this section are applicable to all State highway departments or other political subdivisions of a State which acquire real property for any highway or highway related project in which Federal funds participate in any part of the right-of-way costs of the project.

(2) The provisions of this section are not applicable to those programs

ects specifically excluded by law by agreement with the Federal Highway Administration (FHWA).

**Qualifications.** It is the responsibility of the State highway department to establish qualifications required of all appraisers and reviewing appraisers used by it or its political subdivisions in connection with acquisition of real property for any highway or highway related project in which Federal funds will participate in payment of the right-of-way costs of the project. Such qualifications shall be consistent with the criteria for establishing the qualifications of appraisers and reviewing appraisers in Appendix I of this section.

**Performance evaluation.** The highway department shall establish procedures for continuing evaluation of the qualifications and performance of both fee and staff appraisers reviewing appraisers that it employs. Sufficient information shall be obtained to show that the appraisal reviewing appraisers used are qualified and do perform efficiently.

#### I—CRITERIA FOR THE ESTABLISHMENT OF MINIMUM QUALIFICATIONS FOR APPRAISERS REVIEWING APPRAISERS

Following criteria have been developed for use in establishing qualifications of appraisers and reviewing appraisers.

#### STAFF APPRAISERS

| Appraiser classification | Qualifications                                                                                                                                                                                                                                                                                                                                                                             |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Step III                 | College degree or 4 years verified active experience in the real estate field leading to a basic knowledge of real property valuation; or any combination of such experience and college study to provide a total of 4 years beyond high school graduation of education and experience of the types named.                                                                                 |
| Step IV                  | At least 1 year of satisfactory training and work performance at Step I level that has led to a demonstrated knowledge and understanding of appraisal principles and techniques; or if initially employed at this level, basic education and experience requirements for Step I plus 2 years verified and active experience in the appraisal of less complex rural or urban real property. |

#### STAFF APPRAISERS—Continued

| Appraiser classification | Qualifications                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Step III                 | Two years progressively responsible and satisfactory work performance at Step II level that has demonstrated the knowledge and ability to appraise less complex rural and urban real property; or if initially employed at this level, the basic education and experience requirements of Step I plus 4 years of verified active experience in appraisal of both rural and urban real properties. |
| Step IV                  | Three years progressively responsible and satisfactory work performance at Step III level that has demonstrated the knowledge and ability to appraise complex rural and urban properties of all types; supervisory experience; and knowledge of overall right-of-way procedures including acquisition and condemnation practices.                                                                 |

#### Fee Appraisers

The State should secure the best qualified appraisers available for the particular job to be done. It is necessary for the appraiser's ability to be evaluated on an individual basis. Fee appraisers should have verified specific appraisal experience in the type of property they are employed to appraise.

#### Reviewing Appraisers

Reviewing appraisers should be thoroughly qualified appraisers and should have a background at least equivalent to Step III above. Every reviewing appraiser should have knowledge of the principles and techniques pertinent to appraising and the ability to independently appraise properties of the type for which he is to review appraisal reports by others.

[38 FR 31828, Nov. 19, 1973, as amended at 39 FR 9431, Mar. 11, 1974]

#### § 720.204 Appraisal fees, contracts and agreements.

(a) **Purpose.** This section prescribes Federal Highway Administration (FHWA) requirements for contracts or agreements between an acquiring agency (a State highway department or other political subdivision of a State) and fee appraisers and specialists on federally assisted highway programs and projects. It also describes the conditions under which Federal funds will participate in the cost of employing fee appraisers and special-

its and prescribes criteria for establishing fees for such services.

(b) *Applicability.* (1) Except as provided in Paragraph (b)(2) of this section, the provisions of this section are applicable to the employment of fee appraisers and specialists by an acquiring agency for any highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project.

(2) The provisions of this section are not applicable to those programs and projects specifically excluded by law, or by agreement with the FHWA.

(c) *Employment of fee appraisers and specialists.* (1) Federal funds may participate in the cost of employing fee appraisers and specialists to provide cost studies, estimates or appraisals when:

(i) The staff personnel of the acquiring agency is insufficient to perform the work within a reasonable time.

(ii) A fee appraisal or specialist report is needed for use in a condemnation case.

(iii) The unusual character of the work requires the services of a person or persons with highly specialized knowledge and experience not available on the staff of the acquiring agency.

(2) Fee personnel shall be retained directly by the acquiring agency and required, by written contract, to personally perform the services contracted for, except as hereinafter provided. When services of a highly specialized nature are required to assist in the preparation of the appraisal, the employment of specialists should be handled by the acquiring agency. However, in appropriate instances such employment may be accomplished by the contract appraiser responsible for the appraisal of the entire property. If the latter course is followed, the acquiring agency shall reserve to itself the approval of the selection of the specialist by the contract appraiser.

(d) *Fees.* (1) The basis of payment set forth in the agreement covering more than one parcel shall not be computed on an average rate per parcel. The agreement shall itemize the actual amount to be paid per parcel, or such itemization shall be by a separate statement.

(2) In instances where special or other unusual properties are involved the division administrator may, prior approval to the use of a per diem contracting method with a stated overall limit which should not be exceeded except by supplemental agreement.

(3) Provision shall be made in agreement for a per diem rate to be paid to the fee appraiser or specialist in the event court appearances or conferences preparatory thereto be necessary. This contingent cost, be separate and apart from the overall limit specified in the agreement for completion of the work covered by the agreement.

(4) There shall be no Federal reimbursement for compensation to an acquiring agency for revision or correction of a report required by appraiser's or specialist's failure to comply with contract specifications and standards in the agreement.

(5) There shall be no Federal participation in the appraisal or specialist fee or the amount paid for a parcel. The appraisal or specialist fee is determined as a percentage of the appraised value or assessed value.

(6) The amount of the fee shall represent a fair payment for the services performed whether it be for the valuation, a new valuation occasioned by a change in the taking, or subsequent updating requested by the acquiring agency. In the instance of a new valuation or updating, a percentage of the original fee is acceptable as representative of fair payment. Experience of the acquiring agency and any other available should be considered in arriving at an equitable fee. A qualified individual from the acquiring agency's right way organization should visit the project site to identify the valuation elements, determine the number and type of reports needed, and estimate the fee per parcel. The estimate shall be submitted prior to requesting a proposal from personnel and shall be retained in the acquiring agency's file. A predetermined schedule of fees for different types of properties may be utilized provided documentation to support such schedule(s) is available in the acquiring agency's files. In determining

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basis of payment and the actual to be paid, consideration should be given to:

The complexity of the appraisal her work to be undertaken and skills necessary to provide such services.

The number of parcels included in the assignment.

The amount of information and provided fee personnel by the acquiring agency, and the extent of information that must be developed independently.

The location and conditions pertinent to the project for which the fee is to be provided.

The time allowed for performance of the assignment.

*Requirements for contracts and awards.* Contracts, agreements, or award letters for fee appraisal specialist services shall contain as minimum the following provisions and uses:

(1) *Terms of agreement.*

The complete name and address of the party to the agreement whether individual, partnership, firm or corporation. If a corporation is one of the parties, it shall identify the State in which it is incorporated. Where a contract is for a partnership, firm or corporate agreement or supplement shall identify the person who will perform the valuation service and, if necessary, testify in a condemnation proceeding.

(2) *Federal-aid project number and description of the work to be performed.*

Sufficient detail to show the nature and extent of the services contracted.

(3) *Provision for the appraiser or specialist to testify in court if the need arises.*

(4) *Specifications as to the content and format of reports.*

(5) *Reports to be furnished by the acquiring agency.*

(6) *When completed reports are due.*

(7) *The basis of payment for the assignment to be furnished.*

(8) *The following clause:*

"The appraiser (specialist) warrants that he is not employed or retained by any company or person, other than a bona fide employee working solely for him, to solicit or secure this agreement, and that he has not paid or agreed to pay any company, firm or person, other than a bona fide employee working solely for him, any fee commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the (agency) shall have the right to annul this agreement without liability."

(11) Provisions that would permit the negotiation for mutual acceptance of major changes in the scope, character, or estimated total cost of the work to be performed if such changes become necessary as the work progresses.

(12) Provision that would permit termination of the agreement by the acquiring agency in case the appraiser (specialist) is not complying with the terms of the agreement, the progress or quality of work is unsatisfactory, or for other stated reasons. Provision covering the ownership of work completed or partially completed and basis of payment therefor in the event of termination of the agreement by the acquiring agency.

(13) Provision for a procedure for resolving any dispute concerning a question of fact in connection with the work not disposed of by agreement between the parties, conforming to the practice followed by the acquiring agency in resolving disputes in other contractual matters.

(14) An expressed prohibition against the subletting or transfer of any of the work except as is otherwise provided for in the agreement.

(15) Instructions that the appraiser (specialist) is to follow accepted principles and techniques in the valuation of real property in accordance with existing State law.

(16) Provision for itemizing the fee per parcel within the agreement or by a separate statement.

(17) Provision for updating reports at request of the acquiring agency.

(18) Provision for execution of certification statement. See Appendix 1 to this section for the certificate of appraiser and § 720.201(g)(4) for requirements of a specialist's certification.

(19) The clauses set forth in Appendix A of the Civil Rights Assurances.



(20) Properly executed signature and dates.

## APPENDIX 1

Federal Project No. \_\_\_\_\_  
Parcel No. \_\_\_\_\_

## CERTIFICATE OF APPRAISER

I hereby certify:

That I have personally inspected the property herein appraised and that I have also made a personal field inspection of the comparable sales relied upon in making said appraisal. The subject and the comparable sales relied upon in making said appraisal were as represented in said appraisal or in the data book or report which supplements said appraisal.

That to the best of my knowledge and belief the statements contained in the appraisal herein set forth are true, and the information upon which the opinions expressed therein are based is correct; subject to the limiting conditions therein set forth.

That I understand that such appraisal may be used in connection with the acquisition of right-of-way for a project to be constructed by the \_\_\_\_\_ of \_\_\_\_\_ with the assistance of Federal-aid highway funds, or other Federal funds.

That such appraisal has been made in conformity with the appropriate State laws, regulations and policies and procedures applicable to appraisal of right-of-way for such purposes; and that to the best of my knowledge no portion of the value assigned to such property consists of items which are noncompensable under the established law of said State.

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the values reported herein.

That I have no direct or indirect present or contemplated future personal interest in such property or in any monetary benefit from the acquisition of such property appraised.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the acquiring agency of said State or officials of the Federal Highway Administration and I will not do so until so authorized by said officials, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

That my opinion of just compensation for the acquisition as of the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, is \_\_\_\_\_ based upon my independent appraisal and the exercise of my professional judgment.

(Date) \_\_\_\_\_  
(Signature) \_\_\_\_\_

**NOTE:** Other statements, required by regulations of an appraisal organization which the appraiser is a member or in circumstances connected with the appraisal or the preparation of the report may be inserted where appropriate. Additionally, it is recommended that, to the extent practicable under State law, appropriate statements to be included under the following provisions of Title III Uniform Relocation Assistance and Property Acquisition Policies Act of 1956.

a. The owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

b. Any decrease or increase in the market value of real property prior to the date of valuation caused by the improvement for which such property is required, or by the likelihood that the property would be acquired for such improvement other than that due to physical destruction within the reasonable control of the owner, will be disregarded in determining the compensation for the property.

[38 FR 31828, Nov. 19, 1973]

## PART 740—RELOCATION ASSISTANCE

## Subpart A—General

## Sec.

- 740.1 Purpose.
- 740.2 Effective date.
- 740.3 Definitions.
- 740.4 Standards for decent, safe, and sanitary housing.
- 740.5 Applicability.
- 740.6 Assurances of adequate relocation assistance program.
- 740.7 Eligibility for participation of Federal-aid funds.
- 740.8 Organization requirements for administration of Relocation Assistance Programs.
- 740.9 Relocation contract procedures.
- 740.10 Relocation program plan at final stage.
- 740.11 Relocation program at right-of-way stage.
- 740.12 Relocation program at construction stage.
- 740.13 Relocation program on project affected by a major disaster.
- 740.14 Records.
- 740.15 Annual report.

## Subpart B—Relocation Services

- 740.31 Purpose.
- 740.32 Effective date.

- 33 Relocation assistance advisory services.
- 34 Local relocation office.
- 35 Public information.
- 36 Written notices.
- 37 Appeals.
- 38 Civil rights.

#### Subpart C—Moving Payments

- 51 Purpose.
- 52 Effective date.
- 53 Basic eligibility conditions.
- 54 General criteria for actual moving expenses.
- 55 Moving payments to individuals and families.
- 56 Moving payments to businesses.
- 57 Moving payments to farm operators.
- 58 Moving payments to nonprofit organizations.
- 59 Moving payments for advertising signs.

#### Subpart D—Replacement Housing Costs

- 1 Purpose.
- 2 Effective date.
- 3 Replacement housing payments.
- 4 Replacement housing payments for 80-day owner who purchases.
- 5 Rent supplement payment for 180-day owner who rents.
- 6 Replacement housing payments for 0-day owner who purchases.
- 7 Rent supplement payment for 90-day owner who rents.
- 8 Rent supplement payments for tenant for more than 90 days who rents.
- 9 Replacement housing payments to a tenant for not less than 90 days who purchases.
- 10 Replacement housing or rent supplement payments to a tenant of sleeping room for not less than 90 days.
- 11 Subsequent occupants.

#### Subpart E—Mobile Homes

- 1 Purpose.
- 2 Effective date.
- 3 General.
- 4 Moving expenses.
- 5 Replacement housing payments for 80-day owners.
- 6 Replacement housing payments for 0-day owners.
- 7 Rent supplement payments to tenants of mobile homes for 90 days or more.

#### Subpart F—Replacement Housing as Last Resort

- 111 Purpose.
- 112 Effective date.

#### Sec.

- 740.113 General requirements.
- 740.114 Applicability.
- 740.115 Programming and authorization.
- 740.116 Federal participation.
- 740.117 Preliminary housing study.
- 740.118 Last resort housing plan.
- 740.119 Implementation of housing plan.
- 740.120 Advice and technical assistance by HUD and other Federal agencies.
- 740.121 Compliance with other statutes.

#### APPENDIX A—FORMAT FOR COMPUTATION OF INTEREST PAYMENTS

AUTHORITY: Pub. L. 91-646, 84 Stat. 1894, (42 U.S.C. 4601 et seq.); 49 CFR Part 25 (23 U.S.C. 315); 49 CFR 1.48; 23 CFR 1.32; FMC 74-8, unless otherwise noted.

SOURCE: 41 FR 48682, Nov. 4, 1976, unless otherwise noted.

#### Subpart A—General

##### § 740.1 Purpose.

To prescribe the provisions and procedures for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

##### § 740.2 Effective date.

This subpart is effective 120 days after issuance. At the option of the State, this subpart may be made effective at an earlier date which is not prior to the date of issuance.

##### § 740.3 Definitions.

For the purpose of the relocation assistance regulations the following terms are defined:

(a) *Person*. Includes a partnership, company, corporation, or association as well as an individual or family;

(b) *Family*. Means two or more individuals living together in a single family dwelling unit who:

(1) Are related by blood, adoption, marriage, or legal guardianship who live together as a family unit, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit, or

(2) Are not related by blood or legal ties but live together by mutual consent.

(c) *Displaced person.* Any person who moves from real property or moves his personal property from real property as a result of the acquisition of the real property, in whole or in part, which is required for a Federal or federally assisted program or project, and meets the applicable criteria below:

(1) *Initial occupant.* Any person who:

(i) Is in occupancy of real property at the initiation of negotiations for the acquisition of the real property in whole or in part which property is subsequently acquired, or

(ii) Is in occupancy of real property at the time he is given a written notice of the State's intent to acquire the real property by a given date, and the property is subsequently acquired, and

(iii) Moves from the real property or moves his personal property from the real property subsequent to the earliest date established in § 740.3(c)(1) (i) or (ii).

(2) *Subsequent occupant.* Any person who does not qualify as an initial occupant and who is in occupancy at the time the property is acquired and who subsequently moves from the real property.

(3) If the move occurs after a written order to vacate is issued, the occupant is considered a displaced person even though the property is not acquired.

(4) *Acquired.* For the purposes of this part means the time at which the acquisition agency obtains legal possession of the real property.

(5) A person may qualify as a displaced person if the property must be acquired for a Federal or federally assisted program or project regardless of:

(i) Whether Federal funds contribute directly to the payment for the property;

(ii) Whether the property is acquired by a Federal or State agency;

(iii) The method of acquisition; or

(iv) The name or status of the person who acquires or holds title to the property.

(d) *Initiation of negotiations for the parcel.* The date the acquiring agency makes its first personal contact with the owner of real property, or his rep-

resentative, to give him a written offer for the property to be acquired.

(e) *Dwelling.* The place of permanent or customary and usual abode. Includes a single family house, a family unit in a multi-family building, a unit of a condominium or cooperative housing project, or any other residential unit, including a mobile home.

(f) *Business.* Any lawful activity, excepting a farm operation, conducted primarily:

(1) For the purchase, sale, lease, or rental of personal and real property and for the manufacture, processing or marketing of products, commodities or any other personal property;

(2) For the sale of services to the public;

(3) By a nonprofit organization, or

(4) Solely for the purpose of moving and related expenses under § 740, for assisting in the purchase, resale, manufacture, processing, marketing of products, commodities, personal property, or services by erection and maintenance of an outdoor advertising display(s), whether such display(s) is located on the premises on which any of the above activities are conducted.

(g) *Comparable replacement dwelling.* A dwelling which is:

(1) Decent, safe, and sanitary as defined in § 740.4;

(2) Functionally equivalent and substantially the same as the acquired dwelling with respect to:

(i) Number of rooms;

(ii) Area of living space;

(iii) Type of construction, and

(iv) Age.

(3) Fair housing—open to all persons regardless of race, color, religion, sex or national origin and consistent with the requirements of Title VIII of the Civil Rights Act of 1968;

(4) In areas not generally less desirable than the dwelling to be acquired in regard to:

(i) Public utilities, and

(ii) Public and commercial facilities

(5) Reasonably accessible to the displaced person's place of employment;

(6) Adequate to accommodate the displaced person;

(7) In an equal or better neighborhood which is not subject to unreasonable adverse environmental factors.

(8) Available on the market to the displaced person;

(9) Within the financial means of the displaced family or individual; and

(10) If replacement dwellings meeting the above requirements are not available on the market, dwellings which exceed those requirements may be treated as comparable replacement dwellings.

(h) *Adequate replacement housing.* A dwelling which is:

(1) Decent, safe, and sanitary as defined in § 740.4;

(2) Fair housing—open to all persons regardless of race; color, religion, sex, national origin and consistent with the requirements of Title VIII of the Civil Rights Act of 1968;

(3) In areas not generally less desirable than the dwelling to be acquired in regard to:

(i) Public utilities; and

(ii) Public and commercial facilities.

(4) Reasonably accessible to the displaced person's place of employment;

(5) Adequate to accommodate the displaced person;

(6) Available on the market to the displaced person; and

(7) Within the financial means of the displaced family or individual.

(i) *Nonprofit organization.* A corporation, partnership, individual or other public or private entity, engaged in a business, professional or instructional activity on a nonprofit basis, necessitating fixtures, equipment, stock, trade, or other tangible property for the carrying on of the business, provision or institutional activity on the premises.

(j) *Farm operation.* Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including fiber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support. The term "contributing materially" used in this definition means that the farm operation contributes at least one-third of the operator's income. However, in instances where such operation is obviously a farm operation it need not contribute one-third of the operator's

income for him to be eligible for relocation payments.

(k) *Federal agency.* Any department, agency or instrumentality in the Executive Branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve Banks or branches thereof.

(l) *State.* Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands and any political subdivision thereof.

(m) *State agency.* The National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State(s).

(n) *Federal financial assistance.* A grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia.

(o) *Mortgage.* Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(p) *Owner.* An individual(s) who:

(1) Owns legally or equitably, the fee simple estate, a life estate, a 99-year lease, a lease with at least 50 years to run from the date of acquisition of the property, or other proprietary interest in the property, or

(2) Is the contract purchaser of any of the foregoing estates or interests, or

(3) Has succeeded to any of the foregoing interests by devise, bequest, inheritance or operation of law. For the purpose of this part in the event of acquisition of ownership by devise, bequest, inheritance or operation of law, the tenure of ownership, not occupancy, of the succeeding owner shall in-

clude the tenure of the preceding owner.

(q) *Uniform Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(r) *HUD.* The area office or, where none exists, the regional office of the Department of Housing and Urban Development.

(s) *180-day owner.* An initial occupant who has owned and occupied the dwelling from which he is being displaced for at least 180 consecutive days immediately prior to the initiation of negotiations.

(t) *90-day owner.* An initial occupant who has owned and occupied the dwelling from which he is being displaced for less than 180 days, but not less than 90 consecutive days immediately prior to the initiation of negotiations.

(u) *Tenant.* An individual or family who rents, or is temporarily in lawful possession of a dwelling, including a sleeping room.

(v) *Rent supplement.* The amount in addition to present rent which is necessary to enable a displaced person to lease or rent a comparable replacement dwelling.

(w) *Last resort housing project.* A project authorized for the construction, purchase and/or rehabilitation of dwellings as replacement housing units for highway displacees.

(x) *Displacee.* Means any person who meets the definition of a displaced person.

#### § 740.4 Standards for decent, safe, and sanitary housing.

(a) A decent, safe, and sanitary dwelling is one which conforms with all applicable provisions for existing structures that have been established under state or local building, plumbing, electrical, housing and occupancy codes and similar ordinances or regulations.

(1) If such codes, ordinances, or regulations do not contain items in the minimum standards in § 740.4(b), or have items which are less restrictive than the minimum standards, the minimum standards shall apply, except that

(2) If such a code, ordinance, or regulation is reasonably comparable to the minimum standards, the agency providing relocation assistance may submit such code to the FHWA for approval or disapproval as acceptable standards for decent, safe, and sanitary housing.

(b) In those cases where such code ordinances or regulations do not extend the following minimum standards shall apply:

(1) *Water.* Has a continuing and adequate supply of potable safe water.

(2) *Kitchen requirements.* Has kitchen or an area set aside for kitchen use which contains a sink in good working condition and connected to hot and cold water and an adequate sewage system. A stove and refrigerator in good operating condition shall be provided when required by local codes, ordinances or custom. Where those facilities are not so required by local codes, ordinances, or custom, the kitchen area or area set aside for such use shall have utility service connections and adequate space for the installation of such facilities.

(3) *Heating system.* Has an adequate heating system in good working order which will maintain a minimum temperature of 70 degrees Fahrenheit (21 degrees Celsius) in the living area under local outdoor design temperature conditions. A heating system shall not be required in those geographic areas where such is not normally included in new housing. Bedrooms shall not be included in the "living area" as referred to in this paragraph.

(4) *Bathroom facilities.* Has a bathroom, well lighted and ventilated and affording privacy to a person within it containing a lavatory basin and bathtub or stall shower, properly connected to an adequate supply of hot and cold running water, and a flush closet, all in good working order and properly connected to a sewage disposal system.

(5) *Electric system.* Has an adequate and safe wiring system for lighting and other electrical services. When the utility is not reasonably accessible and is not required by local codes, ordinances or custom, an exception may be approved by the FHWA on a project basis.

(6) *Structurally sound.* Is structurally sound, weather-tight, in good repair and adequately maintained.

(7) *Egress.* Each building used for dwelling purposes shall have a safe unobstructed means of egress leading to safe open space at ground level. Each dwelling unit in a multi-dwelling building must have access either directly or through a common corridor to a means of egress to open space at ground level. In multi-dwelling buildings of three stories or more, the common corridor on each story must have at least two means of egress.

(8) *Habitable floor space.* Has 150 square feet (13.9 square metres) of habitable floor space for the first occupant in a standard living unit or a mobile home and habitable floor space for each additional occupant of at least 100 square feet (9.3 square metres) in a standard living unit or 70 square feet (6.5 square metres) in a mobile home. The floor space is to be subdivided into sufficient rooms to be adequate for the family. All rooms must be adequately ventilated. Habitable floor space is defined as that space used for sleeping, living, cooking, or dining purposes and excludes such enclosed places as closets, pantries, bath, toilet rooms, service rooms, connecting corridors, laundries and unfinished attics, foyers, storage spaces, cellars, utility rooms and similar spaces.

(c) *Rental of sleeping rooms.* The standards for decent, safe, and sanitary housing as applied to rental of sleeping rooms shall include the minimum standards contained in 740.4(a), 740.4(b)(3), (5), (6), and (7), and the following:

(1) *Habitable floor space.* At least 150 square feet (9.3 square metres) of habitable floor space for the first occupant and 50 square feet (4.6 square metres) of habitable floor space for each additional occupant.

(2) *Bathroom facilities.* Lavatory, bath and toilet facilities that provide privacy including a door that can be locked if such facilities are separate from the room.

(d) *Exceptions.* Exceptions may be granted to decent, safe, and sanitary standards but requests should be limited to items and circumstances that are beyond the reasonable control of the

displacee to adhere to the standards. Approved exceptions shall not affect the computation of the replacement housing payment.

(1) *Exceptions for parcels.* In case of extreme hardship or similar extenuating circumstances, an exception to the decent, safe, and sanitary characteristics of replacement housing may be permitted in a particular case with the written concurrence of the FHWA.

(2) *Exceptions for project or area.* The FHWA may approve exceptions to the standards of this paragraph on a project or areawide basis where unusual conditions exist.

#### § 740.5 Applicability.

(a) *Federal and federally assisted projects.* The provisions of this part are applicable to any person who is displaced by any project on which Federal-aid highway funds or other Federal funds administered by the FHWA are or will be utilized, except that the provisions of this part are applicable to new programs established by new Federal legislation as of the effective date of the legislation establishing the new Federal programs.

(b) *Property acquired as required contribution.* All rights-of-way acquired by any State agency, county, town or any other local governmental agency and to be furnished as a required contribution incidental to a Federal or federally assisted highway project shall not be accepted unless all the payments have been made and all the assistance and assurances have been provided as required by this part.

(c) *Property acquired by any agency.* Any Federal agency which acquires property for highway projects authorized under Chapters 1 and 2, Title 23, United States Code, shall provide the relocation services and payments described in this part. When real property is acquired by the State or local governmental agency for such a Federal project, the acquisition shall be deemed to be an acquisition by the Federal agency having authority over such project.

**§ 740.6 Assurances of adequate relocation assistance program.**

(a) *Statewide assurances.* No State highway agency shall be authorized to proceed with any phase of any project which will cause the relocation of any person, or proceed with any construction project concerning right-of-way acquired by the State without Federal participation and coming within the provisions of § 740.5(a) until it has furnished satisfactory assurances on a Statewide basis that:

(1) Relocation payments and services were or will be provided as set forth in this part,

(2) The public was or will be adequately informed of the relocation payments and services which will be available as set forth in this part, and

(3) To the greatest extent practicable no person lawfully occupying real property shall be required to move from his dwelling, or to move his business or farm operation, without at least 90 days written notice from the State of the date by which such move is required.

(b) *Project assurances.* No State highway agency shall be authorized to proceed with right-of-way negotiations on any project which will cause the relocation of any person until it has submitted specific written assurances that:

(1) *Replacement housing.* Within a reasonable period of time prior to displacement:

(i) Comparable replacement dwellings will be available or provided for displaced individuals and families who are initial occupants, or

(ii) Adequate replacement dwellings will be available or provided for displaced individuals and families who are subsequent occupants.

(2) *Adequate relocation program.* The State relocation program is realistic and is adequate to provide orderly, timely and efficient relocation of displaced persons as provided in this part. The written assurances shall be accompanied by an analysis of the relocation problems involved and a specific plan to resolve such problems as described in § 740.11. Where right-of-way is acquired in hardship cases and/or for protective buying the required assurance together with an analysis of

the relocation problems involved and a specific plan to resolve such problems shall be provided for each parcel or for the project.

**§ 740.7 Eligibility for participation of Federal-aid funds.**

(a) *Reimbursement requirements.* Federal funds may participate in relocation payments to eligible person when all of the following condition have been met:

(1) *Program approval and authorization.* There has been approval of Federal-aid program or project and authorization to proceed has been issued. Conceptual stage work may be programmed as either preliminary engineering or right-of-way dependent upon State procedures.

(2) *Person relocated.* When in fact person has been or will be relocated from the project or from the right-of-way approved for such project.

(3) *Lawful costs.* When relocation costs are lawfully incurred.

(4) *Costs recorded as liability.* When relocation costs are recognized and recorded as a liability of the State in its accounts of the State.

(5) *Project agreement executed.* After the project agreement has been executed for the particular project involved; and

(6) *Federally assisted project.* (i) The project must be a federally assisted project. A project is not considered to be federally assisted unless there is Federal participation in the project at the time Federal participation in relocation assistance costs is requested.

(ii) Relocation assistance may be programmed, however, if there are other Federal funds in the project at the time the State's request is received, provided the State indicates its intention to request the participation of Federal funds in construction of some other phase of that project in the future. If, in such a case, Federal funds do not participate in construction or some other phase of the project, reimbursement by the State for the Federal share of the relocation assistance costs must be made.

(b) *Interest acquired.* The type of interest acquired does not affect the eligibility of relocation costs for reimbursement.

bursement provided the interest acquired is sufficient, to cause displacement. In like manner, the terms under which a tenant is occupying property do not affect eligibility for Federal participation provided the tenant is actually displaced by the project and the occupancy is lawful.

(c) *Losses due to negligence.* Losses due to negligence of the relocated person, his agent or employees are not eligible for Federal participation.

(d) *Withholding of relocation payments.* The State agency shall not withhold all or any part of any relocation payment to the displacee to satisfy his obligation to the State agency.

(e) *Federal share.* (1) The costs of providing relocation payments and services required by this part are eligible for Federal participation in the same manner and to the same extent as other project costs.

(2) Federal funds may not participate in any costs of a project, including preliminary engineering, right-of-way, relocation and construction costs, less prior to their displacement from their home:

(i) *Comparable replacement dwellings* were available or provided for displaced individuals and families who were initial occupants.

(ii) *Adequate replacement dwellings* were available or provided for displaced individuals and families who were subsequent occupants.

(iii) *Administrative costs.* Only those costs directly chargeable to the highway project are eligible for Federal participation. The policies and procedures governing reimbursement for employment of public employees on Federal-aid projects are contained in Part 140, Subpart G of this Chapter.

(iv) *Refusal of assistance.* A displaced person can refuse relocation services and still be eligible for payments. There is no requirement that he accept the services if he wants to relocate on his own. However, it would be necessary that he meet the decent, safe, and sanitary requirements and file application within the time limits to qualify for replacement housing payments.

(v) *Property not incorporated into right-of-way.* If a relocation is made

necessary by an acquisition for the project, even though the property acquired is not incorporated within the final right-of-way, Federal funds may participate in relocation payments.

(i) *Delivery of payment checks.* (1) Federal funds are not authorized to participate in the relocation costs where a payment under the relocation program is delivered in person to the displacee by the person who computed such payments.

(2) The restrictions of § 740.7(i)(1) are applicable to the State highway agency and any other Federal, State or local agency performing relocation work on any project where Federal funds are expected to participate in any phase of the project work.

[41 FR 48682, Nov. 4, 1976; 42 FR 30835, June 17, 1977]

#### § 740.8 Organization requirements for administration of Relocation Assistance Programs.

(a) *State organization and procedures.* Each State highway agency shall have an individual whose primary responsibility is the administration of the State's relocation assistance program. There will be assigned to each right-of-way project where relocations will occur one or more individuals whose primary responsibility is to provide relocation assistance. These individuals may have responsibility for more than one project where reasonable.

(b) *State policy and procedures—(1) Policy and procedure manual.* The State highway agency shall provide and submit for acceptance a manual which clearly describes the organization, policies, procedures and practices in its relocation program. The submission may be a separate relocation manual or included in the overall right-of-way manual. Until the State highway agency manual is accepted, the accepted "Point 31" of its policy

<sup>1</sup>Point 31 reads: "Describe the procedures followed in furnishing relocation advisory assistance, and if authorized under State law the procedures for making relocation payments." The 35-point statement as given in former Policy and Procedure Memorandum.

Continued



and procedural statements currently in use" will remain in effect. The manual or policy and procedural statement shall name the office in the State highway agency which has statewide responsibility for implementing the relocation program, the director of that office, and the State agency which will administer the relocation program.

(2) *Relocation assistance and payments procedures.* The State highway agency shall submit a complete description of the procedures followed for furnishing relocation services and for making relocation payments. The procedures, as a minimum, should include a description or explanation of the following items:

(i) The citation and effective date of the applicable law enabling the State to fully comply or a statement of the extent of the State's ability to comply with the relocation provisions or the Uniform Act applicable to Federal and Federal-aid projects financed in any part by Federal funds;

(ii) The standards for accessibility of the relocation assistance offices to the relocatees, the office hours and the type of lists, maps and other information to be maintained, and the extent to which project or field offices will be used;

(iii) When and by whom personal contact with owner-displacees and tenants will be made;

(iv) The personnel, timing, methods and procedures to be used for the preliminary investigations of approximate number of displacees, availability of decent, safe and sanitary replacement housing as provided in § 740.10;

(v) The personnel, methods, timing and procedures to be used to develop the relocation plan as provided in § 740.11(b);

(vi) The procedures to be used by the State in providing public informa-

tion through brochures, public hearings, newspapers, radio, television and written descriptions of available assistance and payments for owners, tenants, businesses, farms, and nonprofit organizations; attach a copy of brochures used by the State;

(vii) The procedures for determining moving cost payments and/or schedules to which both owners and tenants are entitled; attach fixed schedules and exhibits, where applicable;

(viii) The procedures that will be followed in making replacement housing payments to owner-occupants and tenants; who is responsible for determining replacement housing payments; explain eligibility requirements and indicate the time limits and methods applying for payments;

(ix) The closing expenses that a payee; attach a copy of a typical closing statement indicating such closing payments;

(x) The method of computing increased interest cost;

(xi) The procedures utilized to assure that to the greatest extent practicable owners and tenants are not required to move without at least 30 days written notice and when such written notice is given; submit copy of notice;

(xii) The appeal procedures available to displacees;

(xiii) The replacement housing payment procedures for mobile home occupants and include the State's legal determination as to whether mobile homes are realty or personalty under State law; and

(xiv) Attach a copy of all forms developed for carrying out the relocation program, and a copy of individual written notices which are used, including samples of notices to vacate.

(3) *Duplicate payments under State eminent domain law prohibited.* The State highway agency shall submit a statement of applicable State legislation. If, under the State law of eminent domain, the displacee is entitled to receive any payment designed to have substantially the same general purpose and effect as the payments described in this directive and for which Federal reimbursement is otherwise available. The Federal Highway Administrator's determination as to the

dum (PPM) 80-1 is referenced in FHWA's present Federal-Aid Highway Program Manual (FHPM) Vol. 7, Chap. 1, Sec. 2 under Paragraph 6. The State highway agencies are in the transitional stage of converting over to the use of their manuals; therefore, the use of the point statement is still necessary. The FHPM is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

purpose and effect of a State law shall govern Federal participation in such acts.

#### 740.9 Relocation contract procedures.

(a) *Relocation functions performed by another agency.* In order to prevent unnecessary expense and duplication of functions and to promote uniform and effective administration of relocation assistance programs for displaced persons, the Federal Highway Administration or a State highway agency may enter into contracts with any individual, firm, association or corporation to provide services and/or payments in connection with such programs, or may carry out its functions under this part through any State agency having an established organization for conducting relocation assistance programs. Any such agency may be used only if it is adequately staffed, equipped, and organized to provide such services and/or payments.

(b) *Agencies providing relocation assistance.* The State highway agency shall furnish the FHWA the following information concerning the agency, if other than the State highway agency, which will provide the relocation assistance required by this part:

(1) *Name.* The name and location of agency.

(2) *Qualifications.* An analysis of agency's present workload and of ability to perform the requirements of the contract.

(3) *Personnel.* The estimated number of the job titles of relocation personnel of the agency that will provide the relocation assistance for the project.

(4) *Contracting procedures.* Where a State highway agency elects to have relocation services and payments administered under this part administered by another Federal, State, local governmental or private agency having an established organization, it shall enter into a written contract or agreement to that effect with the agency it selects. The selection of prime contractors and subcontractors shall be made by the States on a nondiscriminatory basis and in accordance with the requirements in Title VI of the Civil Rights Act of 1964 and Executive Order 11246. The contract or agreement shall have prior approval by the

FHWA and shall conform with the following:

(1) *Perform services and make payments.* Obligate the agency to perform within the terms of the contract in accordance with the provisions and procedures of this part.

(2) *Retention of records.* Provide that the records required by § 740.14 will be retained by the agency administering the relocation program or turned over to the State highway agency to be retained for a period of not less than 3 years after payment of the final voucher on each project.

(3) *Available for inspection.* The records shall be available for inspection by representatives of the Federal Government at any reasonable hour.

(4) *Specify financial responsibilities.* Where the contract is with a public agency administering another Federal grant program, the contract shall specify the financial responsibilities of each to finance the relocation program required by this part.

(5) *Administrative costs.* Only those costs directly chargeable to the highway project are eligible for Federal participation.

(6) *Civil rights.* Contain the clauses set forth in 49 CFR Part 21.

(7) *Changes.* Provisions that would permit the negotiations for mutual acceptance of major changes in the scope, character or estimated total cost of the work to be performed if such changes become necessary, and

(8) *Revision or amendment of existing agreement or contracts.* Agreements or contracts in existence with Federal, State, local governmental or private agencies on the effective date of this subpart must be revised or amended to include the additional requirements set forth herein and to provide for all the services and payments required by this part. If the terms of the existing agreement or contract do not permit such revision or amendment, supplementary contracts shall be executed to provide such requirements.

(d) *Technical guidance.* Where State employees are directly engaged in project activities or provide technical guidance, consultation, training, or otherwise work directly on specific projects with employees of a political

subdivision to accomplish relocation assistance operations or in escalating such project operations to an acceptable level of performance, Federal funds may participate in the costs of such project activity.

(e) *Land acquired in connection with other Federal or Federally-assisted programs*—(1) *Land acquired and displacements made prior to location of highway.* Where land is acquired and all displacements made for a program or projects, other than one in which Federal funds administered by the FHWA are or will be utilized, prior to receipt of written advice from the State highway agency concerning the location of a proposed highway or project or a request for reservation or conveyance for such purposes,

(i) The provisions of this part will not apply, and

(ii) There shall be no FHWA participation in relocation costs.

(2) *Land acquired and/or displacements made subsequent to location of highway.* Where land is acquired and/or displacements are made subsequent to written advice from the State highway agency giving the location of a proposed highway or other project in which Federal funds administered by the FHWA will be utilized or a request is made for reservation or conveyance for such purposes,

(i) The applicable provisions of this part will apply, and

(ii) The costs to the State highway agency of the relocation payments and services required by this part will be eligible for the FHWA participation in the same manner and to the same extent as other project costs.

(A) The State highway agency and the displacing agency shall enter into an agreement or memorandum of understanding setting forth the responsibilities of each in the relocations involved and the basis for the sharing of costs. Such agreements should be executed during the early stages of project development and will not jeopardize future Federal participation in costs to the State highway agency of the relocation payments and services if the agreement does not constitute a binding obligation for payment of such costs on specified lands.

(B) The agreement should be in effect when a request for authorization to acquire is submitted to the FHWA and should be coordinated with any agreement to be executed under the provisions of § 710.304(o).

(f) *Surveillance.* The State highway agency shall monitor relocation assistance activities conducted by any State agency, individual, firm, association or corporation to the extent necessary to ascertain compliance with the provisions of this part.

#### § 740.10 Relocation program plan at conceptual stage.

A project will be considered to be at this stage until such time as the final location is approved. A conceptual stage relocation plan shall be developed for each alternate location and be submitted to the FHWA prior to the corridor public hearing unless there is a draft environmental impact statement which contains the required information. If a conceptual stage plan is required, it will include the following information which is the same as that required by § 771.18(i)(2)(iii) of this chapter. This information may be obtained by visual inspection of the area and from readily available secondary sources or community sources.

(a) Estimate of households to be displaced, including the family characteristics (e.g., minorities, income level, tenure, the elderly, large families),

(b) Divisive or disruptive effect on the community, such as separation of residences from community facilities or separation of neighborhoods,

(c) Impact on the neighborhood and housing where relocation is likely to take place,

(d) An estimate of the businesses to be displaced and the general effect of business dislocation on the economy of the community,

(e) A description of relocation housing in the area, and the ability to provide relocation housing for the types of families to be displaced,

(f) A description of special relocation advisory services that will be necessary for identified unusual conditions,

(g) A description of the actions proposed to remedy insufficient relocation.

tion housing, including, if necessary, housing of last resort, and

(h) Results of consultation with local officials, social agencies, and community groups regarding the impacts on the community affected.

#### § 740.11 Relocation program at right-of-way stage.

(a) *General requirements.* The FHWA shall not authorize the State to proceed with negotiations on any project which will cause the relocation of any person until the State has submitted and the FHWA has approved the project assurances as provided for in § 740.6(b) and the relocation plan required by § 740.11(b).

(b) *Relocation plan—(1) Inventory of individual needs.* The State shall prepare an inventory of the characteristics and needs of individuals and families to be displaced based on the standard of comparable replacement housing. This inventory may be based upon sampling survey process rather than complete occupancy survey. A State may utilize recent census or other valid recent survey data to assist in preparing the inventory. However, any sampling survey process must be to the depth necessary to be fully representative of the characteristics and needs of the displacees.

(2) *Inventory of available housing.* The State shall develop a reliable estimate of currently available comparable replacement housing. The estimate shall set forth the type of buildings, number of rooms, adequacy of such housing as related to the needs of the persons or families to be relocated based on standards outlined in § 740.4, type of neighborhood, proximity of public transportation and commercial shopping areas, and distance to any pertinent social institutions, such as church, community facilities, etc. The use of maps, plats, charts, etc., would be useful at this time. This estimate should be developed to the extent necessary to assure that the relocation plan can be expeditiously and fully implemented.

(3) *Analysis of inventories.* The State shall prepare an analysis and correlation of the above information and use to develop a relocation plan which will:

(i) Outline the various relocation problems,

(ii) Provide an analysis of current and future Federal, State and community programs currently in operation in the project areas, and nearby areas affecting the supply and demand for housing including detailed information on concurrent displacement and relocation by other government agencies or private concerns,

(iii) Provide an analysis of the problems involved and the method of operation to resolve such problems and relocate the displacees in order to provide maximum assistance, and

(iv) Estimate the amount of leadtime required and demonstrate its adequacy to carry out a timely, orderly and humane relocation program.

#### § 740.12 Relocation program at construction stage.

(a) The FHWA shall verify the fact that replacement housing as required by § 740.7(e)(2) is in place and has been made available to displaced persons prior to authorizing advertising for physical construction bids. The verification will be accomplished by the FHWA spot check field reviews to the depth necessary to provide sufficient evidence that the required replacement housing is in place and has been made available.

(b) The term "made available" shall mean that the affected person has either by himself obtained and has the right of possession of replacement housing or the State has offered him replacement housing which is available for immediate occupancy. A State will be in compliance with the offer requirement when it can be shown that it has:

(1) Determined that replacement housing meeting the requirements of § 740.7(e)(2) is available and has informed the displacee of its availability and location,

(2) Informed the displacee of the amount, if any, of supplemental payments available to him. In hardship cases, assured the displacee that an advance of funds will be made should it become necessary, and

(3) Provided the displacee sufficient time to negotiate for and obtain possession of the replacement housing.

(c) The Federal Highway Administration shall not authorize advertising for physical construction bids unless all of the applicable provisions of this part have been complied with.

(d) On projects for which the FHWA does not normally issue a specific authorization to advertise for bids for physical construction, such as programs administered under Certification Acceptance, the State highway agency shall submit a certification that it has complied with the applicable provisions of this part. The State highway agency shall not advertise for bids for physical construction until the FHWA has approved the certification in writing.

**§ 740.13 Relocation program on projects affected by a major disaster.**

(a) *General.* The provisions and procedures contained in this part as modified by this section are applicable to relocation programs on projects in areas that are designated by the President as major disaster areas.

(b) *Tenure of occupancy.* (1) Individuals and families whose homes have been damaged or destroyed by a major disaster and who have not been able to reoccupy their homes by the start of negotiations for the parcel may be considered to be in constructive occupancy and Federal funds may participate in relocation payments to such individuals and families, provided that location approval for the project had been given by the FHWA prior to the major disaster.

(2) If location approval was not given by the FHWA prior to the major disaster, Federal funds may not participate in relocation payments to such individuals and families under this paragraph.

(c) *Computation of replacement housing payment for a 180-day owner who purchases—*(1) *Fair market value of acquired residence.* The fair market value of damaged or destroyed residences will be as of the usual date of valuation for a highway project.

(2) *Computation.* The replacement housing payment will be the amount if any, which when added to the amount

for which the State acquired the damaged or destroyed dwelling equals the lesser of:

(i) The actual cost the owner is required to pay for a decent, safe, and sanitary dwelling, or

(ii) The amount determined by the State as necessary to purchase a comparable dwelling.

(3) *Duplicate payments.* Any proceeds received by the displacee for payment of damages to his residence as a result of the major disaster, from any source, such as flood insurance, cancellation of a portion of a Small Business Administration (SBA) loan to be deducted from the replacement housing payment for which the displacee is eligible.

**§ 740.14 Records.**

(a) *Relocation records—general.* The State agency shall maintain relocation records showing:

(1) State and Federal project and parcel identification,

(2) Names and addresses of displaced persons and their complete origin and new addresses and telephone numbers (if available after reasonable effort to obtain where displacee moves without assistance).

(3) Personal contacts made with each relocated person, including for each relocated person:

(i) Date of notification of availability of relocation payments and services,

(ii) Name of the official offering or providing relocation assistance.

(iii) Whether the offer of assistance in locating or obtaining replacement housing was declined or accepted and the name of the individual accepting or declining the offer,

(iv) Dates and substance of subsequent followup contacts,

(v) Date on which the relocated person was required to move from the property acquired for the project,

(vi) Date on which actual relocation occurred and whether relocation was accomplished with the assistance of the State agency, referral to other agencies, or without assistance. If the latter, an approximate date for actual relocation is acceptable,

(vii) Type of tenure before and after relocation,

(4) For displacements for dwelling:

(i) Number in family,

(ii) Type of property (single, detached, multifamily, etc.),

(iii) Value, or monthly rent,

(iv) Number of rooms occupied,

(5) For relocated businesses:

(i) Type of business,

(ii) Whether continued or terminated,

(iii) If relocated, distance moved (estimate acceptable),

(6) For relocated farms:

(i) Whether continued or terminated,

(ii) If relocated, distance moved (estimate acceptable),

(b) *Moving expense records.* The State agency shall maintain records containing the following information regarding moving expense payments:

(1) The date the removal of personal property was accomplished,

(2) The location from which and to which the personal property was moved,

(3) If the personal property was stored temporarily, the location where the property was stored, the duration of such storage, and justification for the storage, and storage charges,

(4) Itemized statement of the costs incurred supported by receipted bills or other evidence of expense,

(5) Amount of reimbursement claimed, amount allowed and an explanation of any differences,

(6) Data supporting any determination that a business cannot be relocated without a substantial loss of its existing patronage and that it is not part of a commercial enterprise having at least one other establishment not being acquired by the State or the United States,

(7) When an in lieu payment is made on a business or farm operation, data showing how the payment was computed, and

(8) When moving expense payments are made in accordance with a schedule, the data called for in § 740.14(b)(3) and (4) need not be maintained; instead, records showing the basis on which payment was made shall be maintained.

(c) *Replacement housing and rent supplement payment records.* The State agency shall maintain records containing the following information regarding replacement housing and rent supplement payments:

(1) The date of the State agency's receipt of each application for such payments,

(2) The date on which each payment was made or the application rejected,

(3) Supporting data explaining how the amount of the payment to which the applicant is entitled was calculated; the individual responsible for determining the amount of the replacement housing or rent supplement payment shall place in the file a signed and dated statement setting forth:

(i) The amount of replacement housing or rent supplement payment,

(ii) His understanding that the determined amount is to be used in connection with a Federal-aid highway project, and

(iii) That he has no direct or indirect present or contemplated personal interest in this transaction nor will he derive any benefit from the replacement housing payment,

(4) A copy of the closing statement to support the purchase or downpayment, and incidental expenses when replacement housing is purchased,

(5) Data including computations to support the increased interest payment, and

(6) A statement by the State agency that in its opinion the displaced person has been relocated into decent, safe, and sanitary replacement housing; if in fact the displaced person does not move into decent, safe, and sanitary replacement housing, the State agency shall document the files setting forth the circumstances.

(d) *Records available for inspection.* The relocation records must be available at reasonable hours for inspection by representatives of the Federal Government who have an interest or responsibility in the matters relative thereto.

#### § 740.15 Annual report.

The annual report will be composed of a statistical section and a narrative section and will be submitted annually

for the Federal fiscal year. The report shall be forwarded to the Office of Right-of-Way, Relocation Assistance Division, through the division and regional offices, who will verify the accuracy and completeness of the report.

(a) The statistical report will be prepared on Form PR-1228, Relocation Assistance and Payment Statistics (RCS, HRW-20-03). Separate reports shall be prepared for the rural and urban portions of each system.

(b) The narrative report will concern the waiver of assurance of replacement housing. Any situation or circumstances which required a waiver of assurances of replacement housing must be described. For each waiver reported, the findings and determination supporting the waiver of the requirements of subsection 205(c) (3) of the Uniform Act shall be submitted.

### Subpart B—Relocation Services

#### § 740.31 Purpose.

To prescribe procedures for the provision of relocation services to those relocated as a result of Federal and Federal-aid highway programs.

#### § 740.32 Effective date.

This subpart is effective 120 days after issuance. At the option of the State, this subpart may be made effective at an earlier date which is not prior to the date of issuance.

#### § 740.33 Relocation assistance advisory services.

(a) *General.* Each State shall establish and carry out a relocation assistance advisory services program so that displaced persons will receive uniform and consistent services and payments regardless of race, color, religion, sex, or national origin. The services required herein are intended, as a minimum, to assist persons in relocating to decent, safe, and sanitary housing that meets their needs. The services shall be provided by personal contact, except, if such personal contact cannot be made, the State shall document the file to show that reasonable efforts were made to achieve the personal contact.

(b) *To whom provided.* Relocation assistance advisory services shall be offered to:

(1) Any "displaced person" as defined in § 740.3(c).

(2) Any person occupying property immediately adjacent to the real property acquired when the State determines that such person or persons are caused substantial economic injury because of the acquisition, and

(3) Any person who, because of the acquisition of real property used for his business or farm operation, moves from other real property used for dwelling, or moves his personal property from such other real property.

(c) *Minimum Advisory Service Requirements.* (1) The State relocation assistance advisory services program shall include such measures, facilities, or practices as may be necessary or appropriate to:

(i) Discuss and explain the services available, relocation payments and the eligibility requirements therefore and assist in completing any application or other required forms,

(ii) Determine the need, if any, of displaced persons, for relocation assistance,

(iii) Provide current information on a continuous basis regarding the availability, prices and rentals of comparable decent, safe, and sanitary housing and of comparable commercial properties and locations for displaced businesses,

(iv) Assist a person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location,

(v) Supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons,

(vi) Advise displaced persons that no payments received under the Uniform Act shall be considered as income for the purposes of the Internal Revenue Code of 1954 or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law, and

(vii) Provide other advisory services to displaced persons to minimize hard-

nips to such persons in adjusting to a new location.

(2) The amount and extent of the advisory services shall be administered on a reasonable basis commensurate with the relocatees' needs.

(d) *Coordination of relocation activities.* The State shall contact other Federal, State, and local governmental agencies to determine the extent of their present and proposed actions which will affect its relocation program and the availability of housing resources. Where other agencies are involved in relocation activities, positive action shall be taken by the State to assure maximum coordination.

(1) *Contact with and exchange of information with other agencies.* Relocation officials shall maintain personal contact and shall exchange information with other agencies providing services useful to persons who will be relocated.

i) Such agencies may include but not be limited to social welfare agencies, urban renewal agencies, redevelopment authorities, public housing authorities, the Department of Housing and Urban Development, Veterans' Administration and Small Business Administration.

ii) Contact shall be maintained with real sources of information on private placement properties, including real estate brokers, real estate boards, property managers, apartment owners and operators, and home building contractors.

iii) Contact shall be maintained with the Department of Housing and Urban Development and Veterans Administration relative to properties owned by them which may be available for sale.

(iv) It is expected that in the application of these programs to specific projects, the State will coordinate their actions with the local agencies responsible for administering these and other Federal programs.

#### 740.34 Local relocation office.

(a) A local relocation office shall be established which is reasonably convenient to public transportation or within walking distance of each project when the State determines that the volume of work or needs of

the displaced persons are such as to justify the establishment of such an office. The determination whether or not to establish a local relocation office shall be made on an individual project basis and submitted to the FHWA for approval or disapproval. These offices shall be open during hours convenient to the persons to be relocated, including evening hours when necessary. Consideration should be given to the employment of people in the local relocation office who are familiar with the problems of the area.

(b) *Information to be maintained on a project basis.* The following shall be maintained and/or provided for the displacees of each project:

(1) Current lists on a continuous basis of replacement dwellings available to displaced persons without regard to race, color, religion, sex, or national origin drawn from various sources, suitable in price, size, and condition for displaced persons to the extent they are available,

(2) Current lists on a continuous basis of comparable commercial properties and locations for displaced businesses,

(3) Current data for such costs as security deposits, closing costs, typical downpayments, interest rates and terms,

(4) Maps, showing the location of schools, parks, playgrounds, shopping and public transportation routes in the area where applicable,

(5) Schedules and costs of public transportation where applicable,

(6) Copies of the State's brochure, explaining its relocation program, local ordinances pertaining to housing, building codes, open housing, consumer education literature on housing, shelter costs and family budgeting,

(7) Subscriptions for apartment directory services, neighborhood and metropolitan newspapers, etc.; in addition, multiple listing services shall be maintained where available, and

(8) Other important information of value to displaced persons in the particular area.



§ 740.35 Public information.

(a) *General requirements.* In order to assure that the public has adequate knowledge of the relocation program, the State shall present information and provide opportunity for discussion of relocation services and payments at public hearings, prepare a relocation brochure and give full and adequate public notice of the relocation assistance program. In areas where a language other than English is predominant, public information must be published in the predominant language as well as in English, unless—

(1) The FHWA finds that publication in a language other than English is unnecessary, and

(2) An alternative program is established for the displaced person unable to communicate in English.

(b) *Brochure.* The State shall prepare a brochure adequately describing its relocation program and the replacement housing policy contained in § 740.35(d)(1). Distribution of the brochure shall be made without cost at all public hearings and to all other appropriate individuals and organizations. The brochure shall state where copies of any State regulations implementing the relocation assistance program can be obtained.

(c) *Corridor public hearings.* The "social, economic, and environmental effects" to be discussed at public hearings are contained in Part 790 or the State's procedures accepted under 23 U.S.C. 109(h). The discussion on relocation shall include but not necessarily be limited to the following:

(1) The availability of relocation assistance and services, eligibility requirements and payment procedures,

(2) The estimated number of individuals, families, businesses, farm and nonprofit organizations that are to be relocated by each of the alternatives under consideration at the hearings, and

(3) The studies that have been or will be made and the methods that housing needs of the relocatees will be met.

(d) *Highway design or combined public hearings.* The "social, economic, and environmental effects" of the project should be discussed at public hearings as provided for in Part 771,

Part 790, and in the State's procedure accepted under 23 U.S.C. 109(h). The discussion on relocation shall include but not necessarily be limited to the following:

(1) That no person shall be displaced from his residence required for a Federal or federally-assisted project unless:

(i) A comparable replacement dwelling is available or provided for the initial occupant, or

(ii) An adequate replacement dwelling is available or provided for a subsequent occupant,

(2) The eligibility requirements and payment procedures including:

(i) Eligibility requirements and payment limits for moving costs,

(ii) Replacement housing and rental supplement payment eligibility requirements and payment limits,

(iii) Mortgage interest rate differential eligibility requirements and payment,

(iv) Payment of closing costs incident to the purchase of a replacement dwelling, and

(v) Appeal procedures,

(3) Discussion of the services available under the State's relocation assistance advisory program, the address and telephone number of the local relocation office and the name of the relocation officer in charge,

(4) The estimated number of individuals or families to be relocated,

(5) The estimated number of dwelling units presently available that meet replacement housing requirements,

(6) An estimate of the time necessary for relocation and of the number of dwelling units meeting the replacement housing requirements that will become available during that period and

(7) The depth of presentation would be influenced by the comprehensiveness of the brochure discussed in § 740.35(b). If the brochure covers a particular item in sufficient detail, it would be satisfactory to highlight what the brochure contains without going into detail. If a particular item is not applicable to the project it would not be necessary to discuss the item beyond the mere mention that the law makes provision for such item.

(e) **Public announcements.** (1) In addition to the public hearing notices required by Part 790 of this chapter, the State shall within 15 days after initiation of negotiations on the project make wide public announcements of the relocation services to be provided, payments that can be made and where the State's brochure can be obtained. Such public announcements shall consist of the utilization of any combination of mass media which will provide adequate notice to the public. Mass media used could be: Local newspaper(s), radio, television, and other notices. Particular emphasis should be given to utilizing the media which is read, looked at, or listened to most by residents on the project. Public announcements shall:

State the date of initiation of negotiations established for the project. The date of initiation of negotiations for the project means the date the acting agency makes the first personal contact with the owner of any property on the Federal or Federal-aid project or his designated representative to give him a written offer for the property to be acquired, except where the contact is made solely for protective buying or because of hardship. The control date thus established should be documented in the project file of the acquiring agency.

(2) Define the area of the project, advise occupants of such area of their eligibility for and the requirements to receive moving and replacement housing and rent supplement payments.

(3) Advise that any occupant contemplating moving should, to insure eligibility for moving and replacement housing and rent supplement payments, notify the State before moving.

(4) Advise owner-occupants that in order to be eligible for relocation benefits his property must be acquired by him by the State.

(5) State where the State's brochure describing the relocation program can be obtained, and

(6) Describe the replacement housing policy contained in § 740.35(d)(1).

(7) As an alternate procedure on projects which contain only a small number of displacees, the State may disseminate the above information to each displaced

person either by personal contact or registered mail, return receipt requested.

(23 U.S.C. 109(h), 128, 138 and 315; 49 CFR 1.48(b))

[41 FR 48682, Nov. 4, 1976, as amended at 47 FR 47240, Oct. 25, 1982]

#### § 740.36 Written notices.

The following written notices must be furnished each displaced person to insure that he is fully informed of the benefits and services available to him:

(a) **Notice of intent to acquire.** (1) This notice, along with the brochure as described in § 740.35(b), shall be furnished to owners and tenants when the State determines to establish eligibility for relocation benefits prior to the initiation of negotiations for acquisition of the parcel. When a notice of intent to acquire is issued, it will be considered, for the purposes of Part 740, to be the same as the date of initiation of negotiations for the parcel.

(2) This notice shall not be issued prior to the FHWA authorizing the initiation of negotiations on the project or authorizing acquisition of individual parcels solely for protective buying or because of hardship.

(3) The notice shall contain the statement of eligibility and any restrictions thereto, the anticipated date of the initiation of negotiations for acquisition of the property and how additional information pertaining to relocation assistance payments and services can be obtained.

(4) If a notice of intent to acquire is furnished an owner, it must also be furnished to his tenants within 15 days.

(5) If a notice of intent to acquire is furnished a tenant, the owner must be simultaneously notified of such action.

(b) **Notice of displacement.**—(1) **180-day owners.** At the initiation of negotiations for the parcel, the owner shall be furnished:

(i) A written explanation of the eligibility requirements to receive payments for replacement housing, increased interest costs, incidental expenses, and of his option to rent replacement housing unless such explanations are adequately covered in the brochure. In addition, the relocatee

shall be provided an explanation of the relocation services available and where they may be obtained, and

(ii) The brochure.

(2) *90-day owners.* At the initiation of negotiations for the parcel the owner shall be furnished:

(i) A written explanation of the eligibility requirements to receive payments for replacement housing and of his option to receive a downpayment and incidental expenses to purchase replacement housing and the requirements therefor, and of his option to rent replacement housing unless such explanations are adequately covered in the brochure. In addition, the relocatee shall be provided an explanation of the relocation services available and where they may be obtained, and

(ii) The brochure.

(3) *Tenants.* Within 7 days of the initiation of negotiation for the purchase of the dwelling unit occupied, the tenant shall be furnished, either by certified mail or personal contact, a written statement which includes:

(i) The date of initiation of negotiations for the parcel,

(ii) An explanation of the eligibility requirements to receive a rent supplement payment, and of his option to receive a downpayment for the purchase of replacement housing including incidental expenses and matching requirements therefor unless such explanations are adequately covered in the brochure. Emphasis should be placed on the fact that eligibility is not complete until the property is purchased. In addition, the tenant shall be provided an explanation of the relocation services available and where they may be obtained. Each tenant relocatee shall be provided a subsequent notice when the State has control of the property so that he can be assured of his eligibility to receive relocation payments,

(iii) The brochure,

(iv) If the initial information is given by certified mail as allowed above, there shall be a personal contact with the tenant within 30 days of the initiation of negotiations for the parcel to furnish any additional explanations necessary. Such contact shall be made prior to the 90-day notice to vacate.

(c) *Notice of replacement housing rent supplement amounts.* In order to assure a positive understanding by the displaced person, the amount of replacement housing or rent supplement payment to which he is entitled shall be furnished in writing at the initiation of negotiations or at a subsequent thereto taking the following criteria into consideration:

(1) The housing units used to determine the replacement housing amount should be selected near the time the displaced person will be actively looking for a replacement dwelling.

(2) The amount will be computed in a timely manner and given to the placee within a reasonable period of time subsequent to his request, if

(3) The displacee must be informed of the maximum amount to which he is entitled at least 90 days prior to the time he is required to vacate.

(d) *90-Day notice to vacate.* (1) Construction or development of a Federal-aid highway shall be scheduled that to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling, or to move his business or farm without at least 90 days written notice of the intended relocation date from the agency having responsibility for such acquisition. Exceptions to this provision should be made only in the case of very unusual conditions.

(i) The 90-day notice shall not be given until such time as the State has obtained legal possession of the property.

(ii) The 90-day notice shall give a specific date by which the relocatee must vacate the property. This date may be extended when conditions warrant, but any extension must be in writing and must give another specific date by which the property must be vacated.

(iii) A notice is not required if an occupant moves on his own volition prior to the time the State gives the 90-day notice.

(2) As an alternate to § 740.36, (i), (ii), and (iii), a State may adopt the following procedure:

(i) The 90-day notice may be given on or after the initiation of negotiations for the parcel and shall include

ment that the relocatee will not be required to move from a dwelling, or to move his business or farm before a certain date from the date of the notice. The notice shall inform the relocatee that he will be given a subsequent 30-day written notice specifying the date by which the property must be vacated.

The 30-day notice shall not be required until such time as the State has possession of the property.

Notices are not required if an occupant moves on his own volition prior to the time such notices are given.

**Notice of right to appeal.** All displaced persons shall be furnished a written notice of their right to appeal provided in § 740.37, and the procedures for making such appeal. Such notice may be provided by the broker if such procedures are adequately covered therein.

### 7 Appeals.

**Appeal rights.** At such time as a person indicates he is dissatisfied with the determination as to his eligibility for payment or of an amount of payment offered under the relocation regulations he shall be promptly furnished the necessary forms and notified of the procedures to be followed in filing an appeal.

**State to establish procedures.** The head of the State agency shall establish procedures to insure a prompt and fair decision relative to the objections. The procedures should be made for possible resolution at an appeal below the head of the State agency and, if not satisfactorily resolved, an appeal to the head of the agency. As a minimum the procedures shall provide that: Any person making an appeal shall be given a full opportunity to be heard.

A decision will be reached promptly on the basis of evidence submitted and the relocatee promptly notified of such decision. This written decision must include a full explanation of the reasons for any amount claimed which has been disallowed.

The result reached will be supported by the necessary computations and rationale and documented in the file, and

(4) The decision by the head of the State agency will be considered as final.

### § 740.38 Civil rights.

(a) States should take affirmative action to insure that replacement housing resources used are, in fact, open housing to all races and sexes without discrimination.

(b) States should establish procedures for processing fair housing discrimination complaints and fully inform relocatees of these procedures early in the process of providing them with relocation services.

(c) States should fully inform relocatees of their fair housing rights and options in selecting replacement housing in areas of their choice and the available assistance from the States in ensuring relocatees that their fair housing rights will be protected in accordance with Title VIII of the Civil Rights Act of 1968 and the HUD Amendment Act of 1974.

(d) States, to the extent possible, shall assist relocatees in ensuring against discriminatory practices in the purchase and rental of residential units on the basis of race, color, religion, sex, or national origin.

## Subpart C—Moving Payments

### § 740.51 Purpose.

To prescribe provisions and procedures for payment of moving and related expenses to those relocated as a result of Federal and Federal-aid highway programs.

### § 740.52 Effective date.

This subpart is effective 120 days after issuance. At the option of the State, this subpart may be made effective at an earlier date which is not prior to the date of issuance.

### § 740.53 Basic eligibility conditions.

(a) **General.** Any "displaced person," as defined in § 740.3(c) (1), (2), or (3) is eligible to receive payment for moving expenses in accordance with the criteria in this subpart for:

(1) Moving of personal property located within the acquired right-of-way,

(2) The appropriate moving payments under §§ 740.55, 740.56 (b), (c), (d), 740.57(a), and 740.58(a)(1) when the acquisition of real property used for a business or farm operation causes a person to vacate his dwelling or other real property not acquired, or to move his personal property from other real property not acquired.

(3) The appropriate moving payments under § 740.55 for his dwelling unit and under § 740.56 for the other units in an owner-occupied multi-family dwelling.

(4) One move, except where it is shown to be in the public interest, the FHWA may give prior approval to more than one move.

(b) *Claim for payment.* A displacee must file a written claim with the State agency on a State provided form in order to receive payment. The claim must be filed within a reasonable time limit as determined by the State, but not to exceed 18 months after the later of the following dates:

(1) The date he moves from real property, or moves his personal property from real property, or

(2) The date of acquisition.

(c) *Time of payment.* Payment should be made only after the move has been accomplished. Where hardship exists, payment may be made in advance of the actual move.

(d) *Direct payment to mover.* By written arrangement among the State, the relocatee and the mover, the displacee may present an unpaid moving bill to the State for direct payment.

(e) *Contract with movers.* A State may enter into a contract with independent movers on a schedule basis and furnish a displacee with a list of movers he may choose from to move his property. In such instances, the State would pay the mover.

#### § 740.54 General criteria for actual moving expenses.

(a) *Eligible moving expenses.* When the displacee elects to move on an actual cost basis, the following expenses are eligible for payment:

(1) *Moving to replacement site.* The expenses of moving personal property are limited to a 50-mile radius, either interstate or intrastate, except when the State determines that relocation

cannot be accomplished within the mile area. Such exceptions are all to the nearest adequate and available site.

(2) *Moving to remaining land.* Moving personal property of the displacee onto remaining or other land owned by the displacee or his landowner.

(3) *Advertising for bids.* Advertising for packing, crating, and transportation when the State determines such advertising is necessary. It should be limited to complicated or unusual moves where advertising is the only method of securing bids.

(4) *Cost of bids.* The State estimates the cost of moving bids. If the two bids are incomplete, the State may obtain a third bid.

(5) *Storage.* Storage of a displacee's personal property except on the required property or property owned by the displacee for a reasonable period not to exceed 12 months, where the State determines that it is necessary.

(6) *Insurance.* Insurance premiums covering the reasonable replacement value of personal property against loss and damage while in storage or transit.

(7) *Losses in moving.* The reasonable replacement value of personal property lost, stolen or damaged (not caused by the fault or negligence of the displaced person, his agent or employee in the process of moving, where insurance coverage for such loss or damage is not available).

(8) *Removal and reinstallation.* Expenses of removal, reinstallation and reestablishment of machinery, equipment, appliances and other items which are not acquired, including connection of utilities to such items which do not constitute an improvement to the replacement realty. Such costs are not applicable to items classified by the State as real property and retained by the owner through the owner retention process. Prior payment of any expenses for removal and reinstallation of such property by the owner and the State shall agree in writing that the property is personal and that the State is released from any payment for the property realty.

) *Ineligible moving expenses.* The following expenses are considered ineligible for Federal participation as actual moving expenses:"

) Additional expenses incurred because of living in a new location,

) Cost of moving structures, improvements, or other real property in which the displaced person reserved an interest,

) Improvements to the replacement site or modification of the replacement property to adapt it to the replacement site,

) Interest on loans to cover moving expenses,

) Loss of goodwill,

) Loss of trained employees,

) Loss of business and/or profits,

) Personal injury,

) Cost of preparing the application for moving and related expenses, and

) Payment for search cost in connection with locating a replacement dwelling.

**§ Moving payments to individuals and families.**

*General.* A displaced individual is eligible under § 740.53(a) if he is entitled to receive a payment for his personal property, himself, or his family. The displacee has the right of payment on the basis of actual, reasonable moving expenses, or on a fixed expense schedule.

*Multiple occupancy.*—(1) *Two or more families* occupying the same dwelling unit, who must relocate into a comparable dwelling unit because a comparable dwelling unit is not available, may elect to be reimbursed on an actual cost basis or on a fixed move plus a dislocation allowance for each family. Two or more families occupying the same dwelling unit who relocate into separate dwelling units on a voluntary basis when a comparable dwelling unit is not available, may elect to be reimbursed on an actual cost basis or on a fixed move plus one dislocation allowance to be divided by the families. The fixed move payment will be based on the number of rooms actually occupied by each family plus common rooms utilized by each family.

(2) *Two or more individuals*, not a family, who occupy the same dwelling

unit, are considered to be a single family.

(2) *Owner retention.* When an owner retains his dwelling, the cost of moving it onto remainder or replacement land is not eligible for reimbursement as a part of the cost of moving personal property. However, if he chooses to use his dwelling as a means of moving personal property, the cost of moving personal property may be considered eligible for Federal participation. Payment in these cases would be on a fixed schedule basis.

(b) *Actual reasonable moving expenses.*—(1) *Commercial moves.* A relocated individual or family may be paid the actual, reasonable costs of a move accomplished by a commercial mover. Such expenses will be supported by receipted bills.

(2) *Self-moves.* In the case of a self-move, the relocated individual or family may be paid his actual moving costs, supported by receipted bills or other evidence of incurred expenses but such payment may not exceed the estimated cost of moving commercially. The estimated cost may be prepared by a commercial moving company, or a qualified State employee.

(3) *Cost of transportation.* The costs of transportation of individuals and families to the new location are also eligible. Such costs may be on a mileage basis, not to exceed 20 cents per mile, or reasonable actual fees if commercial transport is used and this may include special services such as the costs of an ambulance to transport invalid relocatees. The actual reasonable costs of meals and lodging, when the State determines that such costs are required because of unforeseen circumstances or the practical necessities of the moving operation are also eligible.

(c) *Moving expense schedule.* (1) A displaced individual or family is eligible to receive a moving expense allowance, not to exceed \$300, determined according to schedules established by the State and approved by the FHWA plus a dislocation allowance of \$200. The schedules are to be prepared to provide adequacy of reimbursement in every locality and shall be graduated in relation to the number of rooms in dwellings and the square footage area

or width in mobile homes and house trailers. The schedules shall cover:

(i) Occupants of unfurnished dwelling units,

(ii) Occupants of furnished dwelling units, (including sleeping room tenants), and

(iii) Occupants of mobile homes who move the mobile home and the personal property.

(2) The moving expense payment will be computed on the number of furnished rooms in the dwelling unit plus basements, attics, garages, and "out buildings" if such spaces do, in fact contain sufficient personality as to constitute a room.

(3) When submitted to the Washington Headquarters by October 15 of each year future changes in State moving cost schedules, as approved by the FHWA, will be published in the **FEDERAL REGISTER** and become effective on the date provided therein. The moving expense schedules are published in the Code of Federal Regulations as Appendix A of 49 CFR Part 25.

[41 FR 48682, Nov. 4, 1976, as amended at 48 FR 34258, July 28, 1983]

#### § 740.56 Moving payments to businesses.

(a) *General.* (1) The owner of a displaced business eligible under § 740.53(a) is entitled to receive a payment for actual reasonable moving and related expenses which include:

(i) Actual reasonable expenses in moving his business or other personal property as provided in § 740.56(b),

(ii) Actual direct losses of tangible personal property in moving or discontinuing his business, as provided in § 740.56(c), and

(iii) Actual reasonable expenses in searching for a replacement business, as provided in § 740.56(d).

(2) In lieu of the payment for actual expenses and losses as specified in § 740.56(a)(1) (i), (ii), and (iii), a displaced business may be eligible for a fixed payment as provided in § 740.56(e).

(b) *Actual reasonable moving expenses—*(1) *Certified inventory.* The owner of a displaced business shall prepare a certified inventory of the items to be actually moved.

(2) *Commercial moves.* The owner of a business may be paid the actual reasonable cost of a move accomplished by a commercial mover. Such expense will be supported by receipted bills and an inventory of the items actually moved. If the items listed on this "moved" inventory deviates to any appreciable extent from the original certified inventory, the amount bid, or estimate, will be appropriately adjusted for payment.

(3) *Self moves.* (i) When the owner can obtain two acceptable bids or estimates from qualified moving firms and/or qualified specialists based on the certified inventory list, the owner of a displaced business may be paid an amount equal to the low bid or estimate without negotiation. When circumstances warrant, the State may negotiate a lower amount not to exceed the lower of the two acceptable bids or estimates. The business still claim removal and reinstall expenses as shown under § 740.53(8).

(ii) If such bids or estimates cannot be obtained or if circumstances such as large fluctuations in inventory prevent reasonable bidding in the opinion of the State, the displaced owner may be paid his actual reasonable moving costs supported by receipted bills and other evidence of expenses incurred. The allowable expenses of a self-move under this provision may include:

(A) Amounts paid for truck and equipment hired,

(B) A reasonable amount for gas and oil, if vehicles or equipment owned by a business being moved is used, and the cost of insurance and depreciation directly allocable to the use of and/or days the equipment is used in the move,

(C) Wages paid for the labor of persons who physically participate in the move with labor costs to be computed on the basis of actual hours worked at the hourly rate paid not to exceed the hourly rate paid by commercial movers or contractors in the locality for each profession or craft involved.

(D) The amount of their wages for working foremen or group leaders regularly employed by the business covering time spent in actual supervision of the move.

(ii) A State may adopt a procedure which a qualified State employee, other than the employee handling the move, makes a moving expense finding to exceed \$2500. The amount of a moving expense finding may be paid to the owner of the business upon completion of the move without supporting evidence of actual expenses incurred. The employee making the finding may not be involved in the delay of the payment.

(b) Upon completion of a self-move, the owner of the displaced business must support his claim for payment with a list of the items which were actually moved. If the items listed on the owner's certified inventory deviate to a significant extent from the list of items actually relocated, the amount previously agreed to will be re-evaluated accordingly.

**Alternate payments.** (i) The provisions of § 740.56(c) contain the criteria under which reimbursement is made for personal property which is moved to the new site.

When personal property which is in connection with the business being moved is of low value and high cost and the estimated cost of moving it is disproportionate in relation to its value, the State may negotiate with the owner, for an amount not to exceed the difference between the cost of replacement of comparable item(s) at the market and the amount which it probably have been received for the item(s) on liquidation.

**Surveillance.** It is required by law that all moving expenses be actual and reasonable. To assure this, the State may provide surveillance commensurate with the expected expenditures involved. Emphasis will be directed toward those moves that are of a commercial nature and/or a substantial expenditure.

**Actual direct losses of tangible personal property.** Actual direct losses of tangible personal property are allowed when a person who is displaced from his place of business is entitled to relocate such property in whole or in part but elects not to do so. Payments for actual direct losses may be made after a bona fide effort has been made by the owner to sell the item(s) involved. When the item(s)

is sold the payment will be determined in accordance with § 740.56(c) (1) or (2). If the item(s) cannot be sold, the owner will be compensated in accordance with § 740.56(c)(3). The sales prices, if any, and the actual reasonable cost of advertising and conducting the sale shall be supported by a copy of the bills of sale or similar documents and by copies of any advertisements, offers to sell, auction records and other data supporting the bona fide nature of the sale.

(1) If the business is to be reestablished and an item of personal property which is used in connection with the business is not moved but promptly replaced with a comparable item at the new location the reimbursement shall be the lesser of:

(i) The replacement costs minus the net proceeds of the sale. "Trade in value" may be substituted for net proceeds of sale where applicable,

(ii) The estimated cost of moving the item to the replacement site but not to exceed 50 miles.

(2) If the business is being discontinued or the item is not to be replaced in the reestablished business the payment will be the lesser of:

(i) The difference between the fair market value of the personal property for continued use at its location prior to displacement less its net proceeds of the sale, or

(ii) The estimated cost of moving the item to the replacement site but not to exceed 50 miles.

(3) If a bona fide sale is not affected under § 740.56(c) (1) or (2) because no offer is received for the property, and the property is abandoned, payment for the actual direct loss of that item may not be more than the fair market value of the item for continued use at its location prior to displacement or the estimated cost of moving the item 50 miles, whichever is less, plus the costs of the attempted sale, irrespective of the cost to the State of removing the item.

(4) When personal property is abandoned with no effort being made by the owner to dispose of such property by sale, the owner will not be entitled to moving expenses, or losses, for the items involved.



(5) The cost of removal of personal property shall not be considered as an offsetting charge against other payments to the displaced person.

(d) *Actual reasonable expenses in searching for a replacement business.* The owner of a displaced business may be reimbursed for the actual reasonable expenses in searching for a replacement business, not to exceed \$500. Such expenses may include transportation expenses, meals, lodging away from home and the reasonable value of time actually spent in search, including the fees of real estate agents or real estate brokers. In exceptional cases, and with prior approval of the FHWA, an amount greater than \$500 may be authorized when circumstances so require:

(1) *Receipted bills.* All expenses claimed except value of time actually spent in search must be supported by receipted bills.

(2) *Time spent in search.* Payment for time actually spent in search shall be based on the applicable hourly wage for the person(s) conducting the search but may not exceed \$10 per hour. A certified statement of the time spent in search and hourly wage rate(s) shall accompany the claim.

(e) *In lieu of actual moving expenses.* In lieu of the payments described in § 740.56(b), (c), and (d), an owner of a discontinued or relocated business is eligible to receive a payment equal to the average annual net earnings of the business except that such payment shall be not less than \$2,500 nor more than \$10,000 providing the following requirements are met:

(1) *State must determine.* For the owner of a business to be entitled to this payment, the State must determine that:

(i) The business cannot be relocated without a substantial loss of its existing patronage. Such determination shall be made by the State only after consideration of all pertinent circumstances, including but not limited to the following factors:

(A) The term "loss of existing patronage" is the net annual dollar volume of business during the 2-taxable years immediately preceding the taxable year in which the business is

displaced. Net loss would be determined by comparing this amount to the estimated net income of the business for the 12 month period after location. Some of the situations which may create a substantial loss of existing patronage under this criteria are:

(1) The displaced business occupied rented quarters and the only replacement sites are for sale but not within the financial capabilities of the displaced business. The same situation could occur even though the original business quarters were owned.

(2) Substantial additional expense for the move which may not be compensable such as downtime during move, the need to borrow additional capital, the inability of the business owner to secure additional financial resources for a new plant, and any other related costs of this nature.

(3) The business may be located in an area of low rentals which prevents the owner of a small low-volume business to be competitive with his competitors. If the business is required to relocate into a higher rental area, it could incur a substantial loss of customers due to a necessary increase in prices to meet his increased operating costs.

(B) The type of business conducted by the displaced person.

(C) The nature of the clientele of the displaced person.

(D) The relative importance of present and proposed location to the displaced business and the availability of a suitable replacement location to the displaced person. This is most evident in those instances where the displaced owner is either elderly, ill, or handicapped. There are many situations, particularly in older neighborhoods, where the owner lives near or within the same building as his business. A replacement location may not be suitable for these particular owners if they were required to travel any distance to work.

(ii) The business is not part of a commercial enterprise having at least one other establishment not being required by the State or the United States which is engaged in the same or similar business.

(b) A part-time individual or family operation in the home which does not contribute materially to the income of the displaced family is not eligible for this payment.

**Payment determination.** The "average annual net earnings" is one-half of any net earnings of the business before Federal, State, and income taxes, during the 2-taxable years immediately preceding the taxable year in which the business is displaced. If the 2-taxable years immediately preceding displacement are not representative, the State with prior approval from the FHWA may use a 2-year period beginning with 2 years prior to negotiations for the project which would be more representative. It is determined that the proposed action has been the cause of the loss of residents thereby resulting in a decline in net income for the business prior to utilizing this alternate method. "Average annual net earnings" include any compensation paid to the business to the owner, his spouse, or his dependents during the period. In the case of a corporate owner of a business, earnings include any compensation paid to the spouse or dependents of the owner of a majority interest in the business. For the purpose of determining majority ownership, stock held by the husband, his wife, and their dependent children shall be treated as owned by him.

**Business less than 2 years.** If the business affected can show that it was in business 12 consecutive months during the 2-taxable years prior to the taxable year in which it is required to be displaced, had income during such period, and is otherwise eligible, the owner of a business is eligible to receive payment in lieu of payment. Where the business was in operation for 12 consecutive months or more but was not in operation during the entire 2-taxable years, the payment shall be computed by dividing the net earnings by the number of months the business was operated and multiplying by 24. A taxable year is defined as any 12-month period used by the business in computing income tax returns.

**Owner must provide information.** For the owner of a business to be

entitled to his payment, the business must provide information to support its net earnings. City, county, State, or Federal law returns for the tax years in question are the best source of this information and would be accepted as evidence of earnings. Any commonly acceptable method could be accepted such as certified financial statements or an affidavit from the owner stating his net earnings providing it grants the State the right to review the records and accounts of the business. The Owner's statement alone would not be sufficient if the amount exceeded the minimum payment of \$2,500.

(5) **Multi-family structures.** Where multi-family structures reasonably comparable to the structure being acquired are not available, the owner may be entitled to an in lieu of moving payment. If a multi-family structure is available that has lesser units than the subject, the "substantial loss of existing patronage" determination is based not on the loss of living units but upon the estimated net annual average dollar volume difference in the two structures. If the net income is not expected to decrease from that derived on the subject property, an in lieu of moving payment may not be made even though there may be a loss in the number of living units. If the only comparables available are single family dwellings, the owner would be eligible for an in lieu of moving payment.

[41 FR 48682, Nov. 4, 1976, as amended at 48 FR 34258, July 28, 1983]

#### § 740.57 Moving payments to farm operators.

(a) **General.** The owner of a displaced farm operation eligible under § 740.53(a) is entitled to receive payments for actual reasonable moving expenses, actual direct losses of tangible personal property and actual reasonable expenses in searching for a replacement farm in accordance with § 740.56(b), (c), and (d).

(b) **In lieu of actual moving expenses.** In lieu of the payments described in § 740.56(b), (c), and (d) any owner of a displaced farm operation is eligible to receive a payment equal to the average annual net earnings of the

farm operation except that such payments shall be not less than \$2,500 nor more than \$10,000 and providing the following requirements are met:

(1) *State must determine.* For the owner of a displaced farm operation to be entitled to this payment, the State must determine that:

(i) The farm operator has discontinued his entire farm operation at the present location or has relocated the entire farm operation.

(ii) In the case of a partial taking, the operator will be considered to have been displaced from a farm operation if:

(A) The property remaining after the acquisition is no longer an economic unit for the same farm operation as determined by the State during its appraisal process,

(B) The taking caused the operator to be displaced from the farm operation on the remaining land, or

(C) The taking caused such a substantial change in the principal operation or the nature of the existing farm operation as to constitute a displacement.

(2) *Payment determination.* Same as § 740.56(e)(2).

(3) *In operation less than 2 years.* Same as § 740.56(e)(3).

(4) *Owner must provide information.* Same as § 740.56(e)(4).

[41 FR 48682, Nov. 4, 1976, as amended at 41 FR 54756, Dec. 15, 1976]

**§ 740.58 Moving payments to nonprofit organizations.**

(a) A displaced nonprofit organization is eligible to receive payments for actual reasonable moving expenses, actual direct losses of tangible personal property and actual reasonable expenses in searching for a replacement site in accordance with § 740.56(b), (c), and (d).

(b) In lieu of the payments described in § 740.58(a), the nonprofit organization may be paid \$2,500 if:

(1) The nonprofit organization cannot be relocated without a substantial loss of its existing patronage. The term "existing patronage" as used in connection with nonprofit organizations includes the persons, community or clientele serviced or affected by the

activities of the nonprofit organization.

(2) The nonprofit organization is part of a commercial enterprise having at least one other establishment being acquired which is engaged in same or similar activity.

**§ 740.59 Moving payments for advertising signs.**

(a) *General.* (1) The owner of a displaced advertising sign is eligible to receive a payment for actual reasonable moving and related expenses which include:

(i) Actual reasonable expense for moving his advertising sign as provided in § 740.59(b),

(ii) Actual direct losses of tangible personal property as provided in § 740.59(c), and

(iii) Actual reasonable expenses in searching for a replacement sign as provided in § 740.59(d).

(2) An advertising sign that is otherwise eligible for moving payments is not be eligible when it is moved in violation of State, Federal or local regulations.

(3) The provisions of § 740.59 do not apply separately to an advertising sign owned by and located on the bus or farm being displaced. Such sign including those eligible for § 740.53(a)(2) are to be considered items of the business or farm and included under the provisions of § 740.56.

(b) *Actual reasonable moving expenses.* The owner of a displaced sign may be reimbursed for his actual reasonable moving expenses in accordance with the provisions of § 740.56(1) and (2).

(c) *Actual direct losses of tangible personal property.* The owner of a displaced sign may be reimbursed for actual direct losses when he is entitled to relocate the sign but does not do so. The amount of such loss will be the lesser of:

(1) The depreciated reproduction cost of the sign as determined by the State.

(2) The estimated cost of moving the sign.

(d) *Actual reasonable expenses in searching for a replacement sign.*

owner of a displaced advertising may be reimbursed for his actual, reasonable expenses in searching for a replacement sign site not to exceed \$10 per hour.

Such expenses may include transportation expenses, meals, lodging away from home and the reasonable value of time actually spent in searching, including the fees of real estate agents or brokers. In exceptional cases, and with prior approval of HWA an amount greater than \$500 but not more than \$500 may be reimbursed when circumstances so require.

**Receipted bills.** All expenses except value of time actually spent in search must be supported by receipted bills.

**Time spent in search.** Payment for time actually spent in search shall be based on the applicable hourly rate for the person(s) conducting the search but may not exceed \$10 per hour. A certified statement of the time spent in search and hourly wage shall accompany the claim.

#### Part D—Replacement Housing Costs

##### Purpose.

To prescribe the provisions and procedures for replacement housing payments to those relocated as a result of a Federal-aid highway project.

##### Effective date.

This subpart is effective 120 days after issuance. At the option of the Administrator, this subpart may be made effective on an earlier date which is not later than the date of issuance.

##### Replacement housing payments.

**General provisions.** (1) Individuals and families displaced from a dwelling acquired for a Federal or Federal-aid highway project are eligible for replacement housing payments in accordance with this subpart.

The displaced individual or family is not required to relocate to the same occupancy (owner or tenant) but has other options according to ownership status and tenure of

occupancy as described in §§ 740.74 through 740.81.

(3) Federal funds will not participate in more than one replacement housing payment for each dwelling unit except in the case of multi-family occupancy of a single family dwelling unit as shown in paragraph (i) of this section and in the case of subsequent occupants as provided for in § 740.81(b).

(b) *Occupancy provisions.* (1) In addition to the tenure of occupancy provisions, a displaced person is eligible for the appropriate payments when he relocates and occupies a decent, safe, and sanitary dwelling within a 1-year period beginning on the latest of the following dates:

(i) The date the owner received from the State final payment for all costs of the acquired dwelling in negotiated settlements; or in the case of condemnation, the date on which the State deposits the required amount in court for the benefit of the owner.

(ii) The date he is required to move by the State's written notice to vacate, or

(iii) The date he moves, if earlier than the date on which he is required to move.

(2) A displaced person who has entered into a contract for the construction or rehabilitation of a replacement dwelling and, for reasons beyond his reasonable control, cannot occupy the replacement dwelling within the time period set forth in paragraph (b)(1) of this section shall be considered to have purchased and occupied the dwelling as of the date of such contract. The replacement housing payments under these conditions would be deferred until actual occupancy was accomplished.

(3) A displaced tenant or owner "occupies" a replacement dwelling within the meaning of this section only if the dwelling is his permanent place of residence, and he satisfied the eligibility requirements set forth in §§ 740.74 through 740.81.

(4) Any person who has obtained legal ownership of a replacement dwelling or land upon which his replacement dwelling is constructed, either before or after displacement, and occupies the replacement dwelling after being displaced but within the

time limit specified in paragraph (b)(1) of this section is eligible for a replacement housing payment if the replacement dwelling meets the requirements of § 740.4. The cost of the land and dwelling at the time of purchase by the displaced person will constitute the "actual cost" in the replacement housing payment determination.

(c) *State inspection for decent, safe, and sanitary housing.* (1) Before making payment to the relocatee the State must have inspected the replacement dwelling and determined that it meets the standards for decent, safe, and sanitary housing. The State may utilize the services of any public agency ordinarily engaged in housing inspection to make the inspection. Such determination by the State that a dwelling meets the standards for decent, safe, and sanitary housing is made solely for the purpose of determining the eligibility of relocated individuals and families for payments under this section and is not a representation for any other purpose.

(2) If it is not possible under the circumstances for the agency to make the necessary inspection or to secure the needed inspection through a competent third party, a certification from the displacee that he has occupied decent, safe, and sanitary housing will be sufficient to establish the displacee's eligibility for payment.

(d) *Statement of eligibility to lending agency.* Where a displacee otherwise qualifies for the replacement housing payments, except that he has not yet purchased or occupied a suitable replacement dwelling, the State, after inspecting the proposed dwelling and finding that it meets the standards set forth in § 740.4 for decent, safe, and sanitary dwellings, shall upon the displacee's request, state to any interested party, financial institution or lending agency, that the displacee will be eligible for the payment of a specific sum provided he purchases and occupies the inspected dwelling within the time limits specified in paragraph (b) of this section.

(e) *Application for replacement housing or rent supplement payments—(1) General requirements.* Application for replacement housing or rent supplement payments shall be in

writing on a form provided by State. The application shall be within 6 months after the expiration of the 1-year period specified in paragraph (b) of this section except in condemnation cases, such payment shall be extended to 6 months final adjudication.

(2) *Decent, safe, and sanitary housing.* In the application, the individual or family must indicate that, to the best of their knowledge and belief, the replacement dwelling meets the standards for decent, safe, and sanitary housing established in § 740.4, that they are eligible for the payment requested. Before any such payments are made to the displacee, the State must have made the determination that the dwelling is decent, safe, and sanitary as required by paragraph (c) of this section.

(3) *To whom payments made.* Payments described in this section shall be made directly to the relocated individual or family, or upon written instruction from the relocated individual or family, directly to the lessor or the seller for use toward the purchase of a decent, safe, and sanitary dwelling. In cases where an individual or family otherwise qualifies for a replacement housing or rent supplement payment, and upon his specific request in the application, the State shall make such payments into escrow prior to the displacee's moving.

(f) *Advance replacement housing payments in condemnation cases.* In cases where property owner should be deprived of the earliest possible payment of replacement housing amounts which he is rightfully due. An advance replacement housing payment of the amount computed and paid to a property owner if the determination of State's acquisition price will be delayed pending the outcome of condemnation proceedings. Since the amount of the replacement housing payment cannot be determined due to the pending condemnation proceedings, a provisional replacement housing payment may be calculated by determining the State's maximum offer for the property as the acquisition price. Payment of such amount may be made upon the owner-occupant's agreement that

Upon final determination of the condemnation proceedings, the replacement housing payment will be re-estimated using the acquisition price determined by the court as compared to the actual price paid or the amount determined by the State necessary to acquire a comparable, decent, safe, and sanitary dwelling.

If the amount awarded in the condemnation proceeding as the fair market value of the property acquired exceeds the amount of the provisional replacement housing payment exceeds the excess of the price paid for or the value determined cost of a comparable dwelling, he will refund to the owner from his condemnation judgment an amount equal to the amount of excess. However, he shall not be required to refund more than the amount of the replacement housing payment advanced. If the property owner does not agree to such adjustment, the replacement housing payment shall be deferred until the case is finally adjudicated and computed on the basis of the final determination, the award as the acquisition

the probable selling price of a comparable replacement dwelling on a tract typical in size for residential use in the area, less the acquisition price of the acquired dwelling plus the acquisition price of that portion of the acquired land which represents a tract typical for residential use in the area.

(1) *Multiple occupancy of same dwelling unit*—(1) *Families*. If two or more eligible families occupy the same single family dwelling unit, and a comparable replacement is available, the occupants are entitled to only one replacement housing or rent supplement payment. If a comparable replacement dwelling is not available, a replacement housing or rent supplement payment for each family will be based on housing which is comparable to the quarters privately occupied by each family plus community rooms which have been shared with other occupants. The acquisition price to be used as the basis for replacement housing payment computations is that amount each owner received from the total payment for the property to be acquired.

*Partial take*. (1) If the acquired dwelling is located on a tract typical in size for residential use in the area, the maximum replacement housing payment is the probable selling price of a comparable replacement dwelling on a tract typical in size for residential use in the area, less the acquisition price of the acquired dwelling and the tract on which it is located.

If the acquired dwelling is located on a tract larger in size than typical for residential use in the area, the maximum replacement housing payment is the probable selling price of a comparable replacement dwelling on a tract typical in size for residential use in the area, less the acquisition price of the acquired dwelling plus the acquisition price of that portion of the acquired land which represents a tract typical in size for residential use in the

(2) *Individuals*. If two or more eligible individuals occupy the same single family dwelling unit they are to be considered as one "family" for replacement housing payment or rent supplement purposes. When all individuals do not relocate to decent, safe, and sanitary housing, the State shall determine and pay those individuals who do relocate into decent, safe, and sanitary housing a pro rata share of the appropriate payment that would have been received if all individuals had relocated together in the same ownership or rental status as they had at the time of initiation of negotiations.

(j) *Joint residential and business use*. (1) Where displaced individuals or families occupy living quarters on the same premises as a displaced business, farm, or nonprofit organization, such individuals or families are separate displaced persons for purposes of determining entitlement to relocation payments.

*Dwelling on land with higher and better use*. Where the acquired dwelling is located on a tract where a fair market value is established on a higher and better than residential use, the maximum amount payable is

(2) The procedure for computing replacement housing payment amounts to owners of multi-family dwellings who occupy one unit is as follows:

(i) *Comparability.* The comparable dwelling should be the same as that acquired; i.e., if the acquired property is a triplex, then the comparable should be a triplex. If comparables are not available, then structures of the next lowest density must be used. If there are not any available comparable multi-family structures to be found, then the comparison of the owner's living unit would be to a single family residence. A higher density structure should never be used as a comparable.

(ii) *Payment determination.* The value of the owner's unit is to be used as the base for the replacement housing payment determination—not the entire fair market value of the subject property. The replacement housing payment determination is that difference, if any, between the value of the owner's living unit and the value of a living unit on the most comparable available property. If the comparable is a triplex, the replacement housing payment is based on the value of only one of the three units; if a duplex, the payment is based on one of the two units; if a single family dwelling, the payment is based on the entire value of the dwelling. The other living units of a multi-family dwelling cannot be included in the value of a comparable because these are considered as income producing and not part of the owner's personal living area.

**§ 740.74 Replacement housing payments for 180-day owner who purchases.**

(a) *General.* (1) A displaced owner-occupant of a dwelling may receive additional payments, the combined total of which may not exceed \$15,000 for the additional cost necessary to purchase replacement housing; to compensate the owner for the loss of favorable financing on his existing mortgage in the financing of replacement housing; to reimburse the owner for incidental expenses incident to the purchase of replacement housing when such costs are incurred as specified herein.

(2) The owner-occupant is eligible for such payments when:

(i) He is in occupancy at the initiation of negotiations for the acquisition

tion of the real property, in whole or in part,

(ii) He is in occupancy at the time is given a written notice by the State that it is their intent to acquire property by a given date,

(iii) Such ownership and occupancy has been for at least 180 consecutive days immediately prior to the date of:

(A) The initiation of negotiations;

(B) His date of vacation, if he has been given a notice of intent to acquire;

(iv) The property was acquired by him by the State, or the State has an order to vacate even though the property is not acquired.

(v) He purchased and occupied a decent, safe, and sanitary dwelling within the time period specified in § 740.73(b),

(vi) For the purposes of paragraph (a)(2)(v) of this section, a displaced person "purchases" a dwelling when he:

(A) Acquires an existing dwelling;

(B) Purchases a life estate in a retirement home. The actual cost of the entrance fee plus any other voluntary commitments to the home, and periodic service charges may be considered. The replacement payment is limited to the actual cost of purchasing a comparable replacement dwelling, less the actual cost of the acquired dwelling.

(C) Relocates and/or rehabilitates a dwelling which he owns or occupies. When the replacement dwelling acquired by the displacee has decayed and sanitary deficiencies, the cost of correcting such deficiencies is eligible to the extent that the purchase cost of the replacement dwelling plus the cost of correcting the deficiencies do not exceed the maximum replacement housing payment based on comparable replacement properties.

(D) Constructs or contracts for the construction of a new decent, safe, and sanitary dwelling on a site which he owns or acquires. The actual construction limits the reimbursement to only those costs necessary to construct a dwelling comparable to the one acquired. The cost of adding new features simply to bring the cost up to the maximum

housing payment is not eligible for reimbursement.

**Replacement housing payment—amount of payment.** (i) The replacement housing payment is the amount, if any, which when added to the amount for which the State acquires the dwelling, equals the actual cost of the dwelling which the owner is required to pay for a decent, safe, and sanitary dwelling or the amount determined by the State as necessary to purchase a comparable dwelling, whichever is less. It is the State's responsibility to make available a comparable replacement dwelling unit and relocate the displaced person to his original owner-tenant status if this is his desire. If the replacement tenancy status is desired by the displaced person, the State will be expected to make a reasonable effort to accomplish the request. If the optional rent supplement is available, the rent supplement, if any, will be based on the specification and computed in accordance with § 740.75.

**Amount of payment to occupant of partial ownership.** (i) When a family dwelling is owned by several persons, and occupied by only one of the owners, the replacement housing payment will be the lesser of: the difference between the displaced occupants' share of the acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling; or the difference between the total acquisition cost of the acquired dwelling and the amount determined by the State as necessary to purchase a comparable dwelling.

the displaced owner-occupants purchase and occupy a decent, safe, and sanitary dwelling, they will be entitled to receive a rent supplement if they rent and occupy a decent, safe, and sanitary dwelling in accordance with the provisions of

**Method of determination of amount of payment to purchase—(i) Schedule.** The State may establish a schedule of probable selling prices of comparable dwellings in the various types of dwelling units acquired. Such schedule shall be prepared from an analysis of probable selling prices of dwellings on the market and periodically

updated to reflect current probable selling prices. Such schedules shall be coordinated with other governmental agencies causing displacement in the same community or area so as to assure uniformity to the maximum extent possible.

(ii) **Three comparable method.** The State may determine the probable selling price of a comparable dwelling by analyzing at least three comparable dwellings representative of the dwelling unit to be acquired which are available on the private market and meet the criteria in § 740.3(g). Less than three comparables may be used for this determination when additional comparable dwellings are not available and the State documents the parcel file to this effect. Selection of comparables and computation of the payment must be by a qualified State employee other than the appraiser or review appraiser on the parcel involved. The selected comparables must be the most nearly comparable and equal to or better than the subject property.

(A) No adjustment will be made to the asking price of the selected comparables. Where a dwelling is obviously overpriced in relation to other comparables, it may not be used in the replacement housing computation.

(B) The basic replacement dwelling used in computing the replacement housing payment must be comparable to the living unit acquired. When the comparable replacement dwelling used in computing the replacement housing payment is similar except it lacks major exterior appurtenances such as a garage, an out building, a swimming pool, etc., the actual cost to build such items may be added to the computed payment to establish the maximum replacement housing payment. Reimbursement will be limited to the lesser of the maximum replacement housing payment as computed above or the actual cost of the replacement dwelling and the cost of the particular appurtenance, if built, within the 1-year time period.

(iii) **Alternate method.** As an alternate to § 740.74(b)(2) (i) and (ii), the State may develop a different method of determining the probable selling price of comparable dwellings and



submit it to the FHWA for prior approval.

(4) *Revision to replacement housing amount.* If the displacee requests assistance in finding replacement housing, he must be offered housing which is comparable and available for purchase within the offered amount. When such housing is no longer available, the State will determine a new replacement housing amount, based on available housing which is equal to or better than the dwelling acquired and meets the other comparable criteria. However, in no event will the new replacement housing payment be less than the original computed amount.

(c) *Increased interest payments—(1) General.* (i) Increased interest payments are provided to compensate a displaced person for the increased interest costs he is required to pay for financing a replacement dwelling.

(ii) The increased interest payment shall be allowed only when the dwelling acquired by the State was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the established eligibility date under paragraph (a)(2) of this section. All bona fide mortgages on the dwelling acquired by the displacing agency will be used to compute the increased interest cost portion of the replacement housing payment.

(2) *Payment computation.* The amount of the increased interest payment will be computed on a form as shown in Appendix A and in accordance with the following procedures:

(i) The computation of the payment for increased interest costs will be based on the actual term of the new mortgage or the remaining term of the old mortgage, whichever is the lesser, and the computation will be based on the actual amount of the new mortgage or the amount of the old mortgage whichever is the lesser, reduced to discounted present value.

(ii) To the amount so derived above will be added the amount actually paid by the purchaser as points and a fee actually charged as an origination or services fee on the amount refinanced but not to exceed an amount which would have been paid if the original mortgage balance was refinanced. The

origination or services fees shall exceed such fees normal to real estate transactions in the area.

(3) *Interest rate of replacement dwelling mortgage.* The interest on the mortgage for the replacement dwelling to be used in the computation shall be the actual rate but may not exceed the prevailing interest rate currently charged by mortgage lending institutions in the vicinity.

(4) *Discount rate.* The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(5) *To whom payment made.* The payment described in this section shall be made directly to the displaced individual or family, or upon written instruction from the displaced individual or family, directly to the mortgagee of the replacement dwelling. In the event where an applicant is otherwise qualified for an interest payment, and upon his specific request, the State may make an advance payment into escrow prior to the displacee's moving.

(6) *Partial acquisition.* (i) Where the dwelling is located on a tract larger than normal for residential use in the area, the interest payment shall be reduced to the percentage ratio that the acquisition price bears to the before value, except the reduction shall not apply when the mortgage requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

(ii) Where a dwelling is located on a tract larger than normal for residential use in the area, the total mortgage balance shall be reduced to the percentage ratio that the value of the residential portion bears to the before value for computational purposes. This reduction shall apply whether or not it is required that the entire mortgage balance be paid.

(7) *Multi-use properties.* The interest payment on multi-use properties shall be reduced to the percentage ratio that the residential value of the multi-use property bears to the before value.

(8) *Other highest and best use.* If the dwelling is located on a tract where the fair market value is established at a higher and better than residential use, and if the mortgage is based on

dential value, the interest payment shall be computed as provided in the appropriate paragraphs above. If the mortgage is based on the higher use, however, the interest payment shall be reduced to the percentage ratio of the estimated residential value of the parcel has to the before value.

(b) *Incidental expenses—amount of payment.* The incidental expenses payable is the amount necessary to reimburse the homeowner for the actual costs incurred by him incident to the purchase of the replacement dwelling, not for prepaid expenses. Such costs may include the following items normally paid by the buyer:

(1) Legal, closing, and related costs including title search, preparing closing contracts, notary fees, surveys, preparing drawings or plats and charges paid incident to recordation,

(2) Lenders, FHA or VA appraisal

(3) FHA or VA application fee,

(4) Certification of structural soundness when required by lender, FHA or

(5) Credit report,

(6) Owner's title policy or abstract of title,

(7) Escrow agent's fee,

(8) State revenue stamps, and

(9) Sales or transfer taxes.

Any fee, cost, charge, or expense is reimbursable as incidental expenses which is determined to be a part of the debt service, or finance charge under 15 U.S.C. 1631-1641 and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System.<sup>1</sup>

(c) *Combined payments not to exceed \$15,000.* If an owner-occupant is otherwise qualified for a payment under § 740.74 but has previously received a payment under § 740.75, the amount of such payment received under § 740.75 shall be deducted from the amount to which he is entitled under § 740.74. In no event may the combined payments exceed \$15,000.

<sup>1</sup> Regulation Z was published at 34 FR 202 (Feb. 11, 1969) under 12 CFR Part 226. This Part implements the provisions of Title 1 (Truth in Lending Act) and Title V (General Provisions) of the Consumer Credit Protection Act, as amended.

(f) *Owner retention.* The owner should be allowed the option of retaining his dwelling in accordance with § 712.304(g). The replacement housing payment in cases of owner retention and occupancy shall be computed in accordance with paragraphs (f) (1), (2), and (3) of this section.

(1) *Dwelling is decent, safe, and sanitary.* The payment, if any, shall be the amount by which the costs to relocate the retained dwelling exceed the acquisition price of the dwelling. The costs to relocate may include the reasonable costs of acquiring a new site or if the dwelling is moved on his remainder land, the market value of the home site and other expenses incident to retaining, moving the dwelling, and restoring it to a condition comparable to that before the move.

(2) *Dwelling is not decent, safe, and sanitary.* The payment shall be computed as shown above except that the costs to cure the decent, safe, and sanitary deficiencies shall be included in the costs to relocate.

(3) *Limitations.* The payment so computed under this paragraph may not exceed the amount which the owner would have obtained under paragraph (b) of this section or, if no comparables are available on which to make such a determination, the cost of a comparable new dwelling.

[41 FR 48682, Nov. 4, 1976, as amended at 47 FR 6619, Feb. 16, 1982]

#### § 740.75 Rent supplement payment for 180-day owner who rents.

(a) *General.* An owner-occupant eligible for a replacement housing payment under § 740.74 who elects to rent a replacement dwelling is eligible for a rent supplement payment not to exceed \$4,000.

(b) *Computation and disbursement of payment.* The payment shall be computed and disbursed in accordance with the provisions of § 740.78 (b), (c) and (d), except that the present rental rate shall be economic rent.

#### § 740.76 Replacement housing payments for 90-day owner who purchases.

(a) *General.* A displaced owner-occupant otherwise eligible under § 740.74(a)(2) except that he has

owned and occupied the dwelling for less than 180 days but not less than 90 days may receive an amount, not to exceed \$4,000, to enable him to make a downpayment on the purchase of a replacement dwelling and reimbursement for actual expenses incident to such purchase; or for additional costs to relocate his retained dwelling in accordance with the following:

(b) *Computation of downpayment and incidental expenses.* (1) The amount of the downpayment shall be determined by the State as the lesser of:

(i) The amount that would be required as a downpayment for financing a conventional loan on a comparable dwelling. Three comparables shall be used in this determination and the most comparable selected for the computation. Less than three comparables may be used for this determination when additional comparable dwellings are not available and the State documents the parcel file to this effect, or

(ii) The amount that would be required as a downpayment for financing a conventional loan on the replacement dwelling actually purchased.

(iii) To the amount in paragraph (b)(1)(i) or (ii) of this section shall be added the amount required to be paid by the purchaser as points and/or origination or loan services fee, if such fees are normal to real estate transactions in the area, on the comparable dwelling, or the replacement dwelling whichever is the lesser.

(2) Incidental expenses are as provided in § 740.74(d).

(3) Upon purchase and occupancy of a decent, safe, and sanitary dwelling by the displacee within the time limits specified by § 740.73(b) the relocatee may be reimbursed:

(i) The full amount of the downpayment determined in paragraph (b)(1) of this section and the eligible incidental expenses if such total amount does not exceed \$2,000, or if more than \$2,000,

(ii) \$2,000, plus 50 percent of the amount in excess of \$2,000 providing the displacee contributes 50 percent of the amount in excess of \$2,000.

(4) The full amount of the downpayment must be applied to the purchase price and such downpayment and inci-

dental costs claimed must be shown in the closing statement.

(c) *Owner retention of dwelling.* The owner may retain his dwelling, and the replacement housing payment, any, will be determined in accordance with the provisions of § 740.74(f) and (2), but may not exceed \$4,000.

(d) *Combined payments not exceed \$4,000.* If an owner-occupant otherwise qualified under this section but has previously received a payment under § 740.77, the amount of a payment made under § 740.77 shall be deducted from the amount to which he is entitled under § 740.76. The combined payments may not exceed \$4,000.

**§ 740.77 Rent supplement payment for day owner who rents.**

(a) *General.* A displaced owner-occupant otherwise eligible under § 740.74 except that he has owned and occupied the dwelling for less than 90 days but not less than 90 days elects to rent a replacement dwelling is eligible for a rent supplement payment not to exceed \$4,000.

(b) *Computation and disbursement of payment.* The payment will be computed and disbursed in accordance with the provisions of § 740.78(b), and (d) except that the present rent rate shall be economic rent.

**§ 740.78 Rent supplement payments to tenant for more than 90 days who rents.**

(a) *General.* A displaced tenant is eligible for a rent supplement payment not to exceed \$4,000, when:

(1) He is in occupancy at the initiation of negotiations for the acquisition of the real property, in whole or in part,

(2) He is in occupancy at the time he is given a written notice by the State that it is their intent to acquire the property by a given date,

(3) He has been in occupancy for at least 90 consecutive days immediately prior to the earlier of:

(i) The initiation of negotiations, or

(ii) His date of vacation, if he has been given a notice of intent to acquire,

(i) The property was subsequently acquired, or he is issued an order to relocate even though the property is not acquired, and

(ii) He rented and occupied a decent, safe, and sanitary dwelling within the 1-year period specified in § 740.73 (b)(1) or (iii).

(3) *Computation of payment.* It is the State's responsibility to make available a comparable replacement dwelling unit and relocate the displaced person to his original tenancy if this is his desire. If the alteration of ownership (downpayment) status desired by the displacee, the State is expected to make a reasonable effort to accomplish the request. If optional housing is available, the payment will be computed in accordance with § 740.76(b).

(4) Except as provided in paragraph 2) of this section, the payment, not to exceed \$4,000, shall be determined by subtracting from the amount which the tenant actually pays for a replacement dwelling or, if lesser, the amount determined by the State as necessary to rent a comparable dwelling for the next 4 years:

(i) 48 times the average monthly rental paid by the displaced individual or family during the last 3 months or other appropriate time as may be determined. The "monthly rental paid" shall include any rent supplements provided by others except when, by such supplement is to be discontinued upon vacation of the property.

(ii) If such average monthly rental is reasonably equal to market rentals for similar dwellings, the economic conditions as established by the State shall be used.

(3) When the average monthly rental being paid by the displacee, not including supplemental rent by public agencies, exceeds 25 percent of the monthly gross income of such individual or family, the payment, not to exceed \$4,000, shall be determined by subtracting 12 times the average monthly income of the displacee from:

(i) 48 times the monthly rental the tenant actually pays for his replacement unit or, if lesser, the amount determined by the State as necessary to rent a comparable dwelling if he relocates into private housing, or

(ii) 48 times the monthly rental the displacee is required to pay if he relocates in a unit of public subsidized rental housing.

When a rental replacement housing payment computed under these criteria exceeds \$4,000, the selected replacement dwellings may not be classed as comparable. Housing must be made available which is within the financial means of the displacee.

(3) Monthly rental rates shall not include the cost of utilities for the dwelling. When the parcel being acquired and the comparable selected for the computation do not both exclude utilities in the monthly rent, an appropriate adjustment will be made so as to compare rent without utilities to rent without utilities.

(4) If the displacee receives public assistance, such as through a welfare program, that designates an amount allocated for housing costs, and the displacee has been informed of such allocation, the payment will be considered within his financial means, and the rent supplement will be computed in accordance with paragraph (b)(1) of this section. If the public assistance does not designate a specific amount for rent, or the displacee is not informed of the amount specified for rent, the rent supplement computation will be based on the monthly rent being paid or 25 percent of gross income, including the public assistance payment, whichever is less.

(c) *State's determination of amount necessary to rent.* The State may determine the rental rates of comparable housing by a schedule, comparable methods or an approved alternate in accordance with the principles set forth in § 740.74(b)(2).

(d) *Disbursement of rent supplement payments.* The amount of the rental payment, determined as shown above, shall be paid in a lump sum, unless the displaced person who is entitled to the payment requests that it be paid in installments.

(e) *Change of occupancy.* If a tenant, after moving to a decent, safe, and sanitary dwelling, relocates within the 1-year period specified in § 740.73(b) to a higher cost rental unit, he may present another claim for the amount

in excess of what was originally claimed, but not to exceed the total rent supplement computed by the State.

[41 FR 48682, Nov. 4, 1976, as amended at 41 FR 51396, Nov. 22, 1976]

**§ 740.79 Replacement housing payments to a tenant for not less than 90 days who purchases.**

(a) *General.* A displaced tenant eligible for a rent supplement payment under § 740.78 who elects to purchase a replacement dwelling is eligible to receive an amount, not to exceed \$4,000, to enable him to make a downpayment on the purchase of a replacement dwelling including the expenses incidental to such purchase.

(b) *Computation of payment.* The payment shall be computed in accordance with the provisions of § 740.76(b).

**§ 740.80 Replacement housing or rent supplement payments to a tenant of sleeping room for not less than 90 days.**

(a) *General.* A displaced tenant of a sleeping room who is eligible for a rent supplement payment under § 740.78(a) may receive an amount, not to exceed \$4,000, as a rent supplement payment or to enable him to make a downpayment on a replacement dwelling in accordance with paragraphs (b) and (c) of this section.

(b) *Rental replacement housing payment.* (1) The payment shall be determined by subtracting from the amount the tenant actually pays or, if lesser, the amount determined by the State as necessary to rent a comparable sleeping room for the next 4 years the following amount:

(i) 48 times the average monthly rental paid by the displaced tenant during the last 3 months, or

(ii) If such average monthly rental is not reasonably equal to market rentals for similar sleeping rooms, the economic rent as established by the State.

(2) The State's determination of the amount necessary to rent and the disbursement of the rent supplement payment shall be as provided in § 740.78(c) and (d).

(c) *Downpayment.* The downpayment amount including the expenses incident to purchase of the replacement dwelling are to be computed in

accordance with the provisions of § 740.76(b).

**§ 740.81 Subsequent occupants.**

Previous sections of this subpart apply only to those persons who were in occupancy of the dwelling to be acquired at the initiation of negotiations for its purchase. The provisions of this section are applicable only to the persons specified in § 740.3(c)(2) who occupy a dwelling subsequent to the initiation of negotiations for its purchase and who are in occupancy at the time the acquiring agency obtains legal possession of the property.

(a) *General.* Subsequent occupants are entitled to relocation assistance and advisory services as prescribed in § 740.33, in assisting them to obtain adequate replacement housing as such housing is defined in § 740.3(h).

(b) *Rent supplement payments.* When housing meeting the adequacy criteria for replacement housing in § 740.3(h) is available, Subpart A is available to the subsequent occupant and the monthly rent of such dwelling does not exceed 25 percent of his monthly gross income, the occupant will be so formed and will not be eligible for rent supplement.

(2) When adequate replacement housing is not available, or is available but the monthly rent exceeds 25 percent of the displacee's monthly gross income, the provisions of this Part 740, Subpart F are to be employed to provide the needed adequate replacement housing.

(c) *90-day notice.* The provisions of § 740.36(d) are applicable to subsequent occupants.

## Subpart E—Mobile Homes

**§ 740.91 Purpose.**

To prescribe provisions and procedures for moving and related expenses and for replacement housing payments to those relocated as a result of Federal and Federal-aid highway programs.

**§ 740.92 Effective date.**

This subpart is effective 120 days after issuance. At the option of the State, this subpart may be made effective

at an earlier date which is not  
r to the date of issuance.

§ 740.93 General.

(f) *Applicability.* The provisions of subpart apply to an "initial occupant" as defined in § 740.3(c)(1). If it would become necessary to apply provisions of this Subpart E to a subsequent occupant" as defined in § 740.3(c)(2), the word "adequate" should be substituted for "comparable" throughout this subpart.

(g) *Applicability of other regulations.* Except as provided in this Subpart E, the provisions of Part 740 are applicable to eligible persons displaced from mobile homes and/or homesites.

*Acceptability of the mobile home.* Other than otherwise eligible under this Subpart E, the owner of a mobile home is entitled to a replacement housing payment if his mobile home does not meet comparable mobile homes park entrance requirements. The amount of payment will be computed as the difference between acquisition cost (or trade-in value of the mobile home) and the price of a mobile home acceptable to the mobile home park or, if the cost to rehabilitate the existing mobile home, if practicable, to meet the entrance requirements.

(b) *Mobile home park entrance fees.* The displaced person is required to pay an entrance fee in order to enter a mobile home park, such fee will be included in the rent supplement or replacement housing payment provided:

(1) The park with the fee is the only comparable park available, and  
(2) The fee is not returnable to the displaced person like a security deposit would

(c) *Partial acquisition of mobile home park.* Where the State determines that a sufficient portion of a mobile home park is taken to justify the operator of such park to move his business or go out of business the displaced persons and occupants of the mobile home dwellings not within the actual taking but who are forced to move would be eligible to receive the same payments as though their dwellings were within the actual taking.

(f) *Mobile home as replacement dwelling.* A mobile home may be considered a replacement dwelling provided it substantially meets applicable State and Federal requirements for decent, safe, and sanitary dwellings.

(g) *Computation on next highest type.* When a comparable mobile home is not available it will be necessary to calculate the replacement housing payment on the basis of the next highest type of dwelling that is available and meets the applicable requirements and standards, i.e., a higher type mobile home or a conventional dwelling.

§ 740.94 Moving expenses.

(a) *General.* Owners and occupants displaced from mobile homes are subject to the eligibility requirements set forth in this Part 740, Subparts A and C.

(b) *Owners of mobile homes.* (1) The owner of a mobile home may be reimbursed for the actual reasonable costs of moving the mobile home and/or other personal property in accordance with this Part 740, Subpart C.

(2) If the owner occupies the mobile home and the mobile home is moved, he may elect to be reimbursed in accordance with Table II of Appendix A to 49 CFR Part 25.

(3) If the owner occupies the mobile home and the mobile home is not moved, he may elect to be reimbursed in accordance with Table I of Appendix A to 49 CFR Part 25.

(4) The cost of moving a mobile home on an actual cost basis may include the cost of detaching and reattaching fixtures and appliances where applicable.

(c) *Tenants of mobile homes.* Tenants who are displaced from a mobile home may elect to be reimbursed for moving their personal property on an actual reasonable cost basis as specified in § 740.55(b) or in accordance with Table I of Appendix A to 49 CFR Part 25.

§ 740.95 Replacement housing payments for 180-day owners.

(a) *General.* (1) A displaced owner of a mobile home who has occupied for at least 180 days, the mobile home on

the site from which he is being displaced and who is otherwise eligible under § 740.74(a) is eligible for payments, the total of which may not exceed \$15,000 for:

(i) The additional costs necessary to purchase replacement housing as specified in § 740.95 (b), (c), and (d) and in accordance with the principles of § 740.74(b).

(ii) The loss of favorable financing on his existing mortgage in the financing of such replacement housing under the provisions of § 740.74(c).

(iii) Incidental expenses incident to the purchase of such replacement housing in accordance with the provisions of § 740.74(d).

(2) A displaced owner-occupant of a mobile home eligible for a replacement housing payment as shown in § 740.95(a)(1) who elects to rent, is eligible for a rent payment, not to exceed \$4,000, in accordance with § 740.95 (b)(2), (c)(2), and (d)(2). Such payment will be computed and disbursed in accordance with the provisions of § 740.78(b).

(b) *Acquisition of mobile home and site*—(1) *Replacement housing payment.* The replacement housing payment will be the amount, if any, which when added to the amount for which the State acquired his mobile home and site equals the lesser of:

(i) The amount the owner is required to pay for a decent, safe, and sanitary replacement mobile home and site, or

(ii) The amount determined by the State necessary to purchase a comparable mobile home and site in accordance with the provisions of § 740.74(b).

(2) *Rent supplement payment.* If the owner elects to rent, the rent supplement payment shall be determined by subtracting 48 times the economic rent of the mobile home and site from the lesser of:

(i) The amount determined by the State necessary to rent a comparable mobile home and site for a period of 4 years, or

(ii) 48 times the monthly rent he actually pays for his replacement dwelling.

(c) *Acquisition of site only.* Upon acquisition of the site, but not the home situated upon the site, and the mobile

home is required to be moved, the placement housing payment will be terminated as follows:

(1) *Replacement housing payment.* The replacement housing payment will be the amount, if any, which when added to the amount for which the State acquired his mobile home and site equals the lesser of:

(i) The amount the owner is required to pay for a comparable site

(ii) The amount determined by the State necessary to purchase a comparable mobile homesite.

(2) *Rent supplement payment.* If the owner elects to rent, the rent supplement payment shall be determined by subtracting 48 times the economic rent of the mobile homesite from the lesser of:

(i) The amount determined by the State necessary to rent a comparable mobile homesite for 4 years, or

(ii) 48 times the monthly rent he actually pays for his replacement mobile homesite.

(3) *Mobile home as personalty.* If the mobile home which must be moved from the site is personalty, it cannot be acquired under State law, the displaced owner-occupant is entitled to a replacement housing payment if:

(i) The structural condition of the mobile home is such that it cannot be moved without substantial damage or unreasonable costs. The payment will be determined by the State will utilize "average value" instead of "acquisition cost" to determine the maximum placement housing payment, or

(ii) The mobile home is not deemed safe, and sanitary. The payment determination by the State will utilize "trade-in value" instead of "acquisition cost" to determine the moving placement housing payment.

(d) *Acquisition of mobile home only—owner-occupant rents site.* *Replacement housing payment.* The replacement housing payment will be the amount, if any, which when added to the amount for which the State acquired his mobile home equals the lesser of:

(i) The actual amount the owner is required to pay for a replacement dwelling, or

(ii) The amount determined by the State necessary to purchase a comparable mobile home, plus the difference:

(A) In the amount determined by the State necessary to rent a comparable mobile homesite for 4 years and

(B) 48 times the rent being paid on the site acquired.

The owner may choose to purchase a comparable mobile homesite as an alternative to renting a site. If so, the downpayment for the site shall be made in accordance with § 740.76(b).

(2) *Rent supplement payment.* If the owner elects to rent a replacement mobile home, the rent supplement payment shall be determined by subtracting 48 times the economic rent of the mobile home and the actual rent paid from the lesser of:

(i) The amount determined by the State necessary to rent a comparable mobile home and site for 4 years, or

(ii) 48 times the monthly rent he actually pays for his replacement dwelling.

(c) *Acquisition of rented site only—mobile home not acquired—(1) Replacement housing payment.* Upon acquisition of the site, but not the home situated upon that site, and the mobile home is required to be moved, the owner-occupant of the mobile home is eligible for up to \$4,000:

(i) For the downpayment on a comparable site. The amount shall be the estimated amount necessary for a downpayment, or the displacee's actual cost, if less. The State's determination of the downpayment shall be made in accordance with § 740.76(b),

(ii) As a rent supplement for a comparable replacement site. This rent supplement payment shall be the difference determined by subtracting 48 times the rent on the site being acquired from the lesser of:

(i) The amount determined by the State necessary to rent a comparable homesite for 4 years, or

(ii) 48 times the monthly rent he actually pays for his replacement site.

(d) *Mobile home as personalty.* See § 90.095(c)(3) for circumstances under which a replacement housing payment for the mobile home may be qualified.

## § 740.96 Replacement housing payments for 90-day owners.

(a) *General.* A displaced owner of a mobile home who has occupied, for less than 180 days but more than 90 days, the mobile home on the site from which he is being displaced and who is otherwise eligible under the provisions of § 740.74(a)(2) is eligible for an amount not to exceed \$4,000:

(1) To enable him to make a downpayment on the purchase of replacement housing in accordance with § 740.76,

(2) To reimburse him for the incidental expenses of such purchase in accordance with § 740.74(d), or

(3) If he elects to rent, a rent supplement payment shall be determined as provided in paragraphs (b)(2), (c)(2), and (d)(2) of this section. Such payments are to be computed and disbursed in accordance with the principles of § 740.78.

(b) *Acquisition of mobile home and site—(1) Replacement housing payment.* If the owner purchases a replacement dwelling, the replacement housing payment will be determined in accordance with the provisions of § 740.76(b), except that the amount of the downpayment shall be determined by the State as the amount required as a downpayment on the purchase of a comparable mobile home and site.

(2) *Rent supplement payment.* If the owner elects to rent, the rent supplement payment shall be determined by subtracting 48 times the economic rent of the acquired mobile home and site from the lesser of:

(i) The amount determined by the State necessary to rent a comparable mobile home and site for 4 years, or

(ii) 48 times the monthly rent he actually pays for his replacement dwelling.

(c) *Acquisition of site only from owner-occupant of mobile home—(1) Replacement housing payment.* If the owner purchases conventional replacement housing or a site to which the mobile home is moved, the replacement housing payment will be an amount determined in accordance with the provisions of § 740.76, except that the amount of the downpayment shall be determined by the State as



the amount required as a downpayment on the purchase of a comparable site.

(2) *Rent supplement payment.* If the owner elects to rent, the rent supplement payment shall be determined by subtracting 48 times the economic rent of the acquired site from the lesser of:

(i) The amount determined by the State necessary to rent a comparable site for 4 years, or

(ii) 48 times the monthly rent he actually pays for his replacement site.

(3) *Mobile home as personalty.* See § 740.95(c)(3) of this Subpart E for circumstances under which a replacement housing payment for the mobile home may be qualified.

(d) *Acquisition of mobile home only—owner-occupant rents site—(1) Replacement housing payment.* If the owner purchases replacement housing, the replacement housing payment will be:

(i) An amount determined in accordance with the provisions of § 740.76(b) except that the amount of the downpayment shall be determined by the State as the amount required as a downpayment on the purchase of a comparable mobile home, plus

(ii) An amount determined by subtracting 48 times the rent being paid on the site acquired from the lesser of:

(A) The amount determined by the State necessary to rent a comparable mobile homesite for a period of 4 years, or

(B) The amount of rent the owner actually pays for the replacement site.

The owner may choose to purchase a comparable mobile homesite as an alternative to renting a site. If so, the downpayment for the site shall be made in accordance with § 740.76(b).

(2) *Rent supplement payment.* If the owner elects to rent, the payment shall be determined by subtracting 48 times the economic rent of the mobile home and actual rent of the site from the lesser of:

(i) The amount determined by the State necessary to rent a comparable mobile home and site for 4 years, or

(ii) 48 times the monthly rent he actually pays for his replacement dwelling.

§ 740.97 Rent supplement payments to tenants of mobile homes for 90 days or more.

(a) *General.* A displaced tenant of a mobile home who has occupied for at least 90 days the mobile home on the site from which he has been displaced and who is otherwise eligible under the provisions of § 740.78(a), is eligible for a replacement housing or rent supplement payment, not to exceed \$4,000.

(b) *Options.* (1) He may receive an amount to enable him to make a downpayment to purchase a decent, safe, and sanitary dwelling and to reimburse him for the expenses incident to such purchase in accordance with the provisions of § 740.96(b)(1), or

(2) If he elects to rent, he may receive a rent supplement payment which will be determined in accordance with § 740.96(b)(2), except that the actual rent being paid for the mobile home and site will be used in the computation. The payment will be computed and disbursed in accordance with the principles of § 740.78 (b), (c) and (d).

## Subpart F—Replacement Housing as Last Resort

### § 740.111 Purpose.

To prescribe the provisions and procedures to provide for replacement housing as last resort when it is determined that a Federal or Federal-aid project cannot proceed to actual construction because comparable replacement sale or rental housing is not available for highway displacements and cannot otherwise be made available. It is also the purpose of this Subpart to allow broad latitude in methods of implementation by the States.

### § 740.112 Effective date.

This subpart is effective 120 days after issuance. At the option of the State, this subpart may be made effective at an earlier date which is not prior to the date of issuance.

### § 740.113 General requirements.

(a) *Rights of the displaced persons.* The provisions of this subpart do not

drive any displaced person of his rights to receive relocation assistance, including costs or replacement housing payments for which he may be otherwise eligible nor of his freedom of choice in the selection of replacement housing. The State may not require a displaced person, without his written consent, to accept a dwelling provided by the State under these procedures in lieu of his acquisition payment, if any, or the real property from which he is displaced or the replacement housing payment supplement payment for which he may be eligible. However, the State's obligation of providing comparable replacement housing will have been discharged when comparable replacement housing has been made available to the displaced person in compliance with the Uniform Act. If the displaced person does not accept the comparable replacement housing provided by the State but obtains and occupies decent, safe, and sanitary housing, the replacement housing payment shall be the amount necessary to provide comparable replacement housing or the amount actually incurred by the displaced person for decent, safe, and sanitary housing, whichever is the lesser.

**Consequential displacement.** Any person displaced because of the acquisition of real property for a last resort housing project under the State's exercise of eminent domain (including eminent domain agreements under the threat of eminent domain power) is entitled to all benefits to which he is eligible under the relocation assistance provisions, including:

This provision is not applicable to an owner-occupant who voluntarily sells his property to the State for last resort housing, and the owner-occupant so certifies in a statement maintained in the State's files.

**Civil rights.** The selection of contractors and subcontractors shall be made by the States on a non-discriminatory basis and in accordance with the requirements in Title VI of the Civil Rights Act of 1964 and Executive Orders 11246 and 11625.

#### 14 Applicability.

**General.** The provisions of this part apply to an "initial occu-

pant." Should it become necessary to apply the provisions of this Subpart to a "subsequent occupant" the words "adequate replacement housing" should be substituted for "comparable replacement housing" throughout this Subpart.

(b) *Utilization of last resort housing.* May be provided when:

(1) Comparable replacement housing is not available for the displaced person, or

(2) Comparable replacement housing is available for the displaced person within his financial means but:

(i) The computed replacement housing payment exceeds the \$15,000 limitation of 42 U.S.C. 4623 or

(ii) The computed rent supplement exceeds the \$4,000 limitation of 42 U.S.C. 4624.

(c) *Replacement housing costs in excess of \$15,000 for a 180-day owner.* The 180-day owner is eligible for increased interest costs, closing costs, and a replacement housing payment. When the sum of these items is estimated to exceed the \$15,000 maximum, the last resort housing provisions are applicable.

(d) *Rent supplement in excess of \$4,000 for a 90-day owner or tenant.* A 90-day owner or tenant, in accordance with Part 740, Subpart D is eligible for a rent supplement. When this payment is expected to exceed the \$4,000 maximum, the last resort housing provisions are applicable.

(e) *Alternate procedure when replacement housing available at cost exceeding \$15,000 or \$4,000.* Notwithstanding paragraphs (b), (c), and (d) of this section, a last resort housing project need not be programmed if comparable replacement housing is available and a State wishes to pay with its own funds amounts which exceed the \$15,000 or \$4,000 limitations of 42 U.S.C. 4623 and 4624. Close surveillance should be maintained where this alternate procedure is used to assure that displacees receive the full entitlement under the principle of comparability.

(f) *Downpayment.* A displaced person eligible for a downpayment under Part 740, Subpart D must equally match any amount over \$2,000 required for the downpayment and inci-

dental expenses of the purchase. He may contribute labor and materials as part or all of his matching funds.

(g) *Direct payments.* No payments made under this Subpart shall be paid directly to the displacee, except in those instances where the State, in its judgment, considers a direct payment to be a prudent and feasible action and in the public interest. Whenever a direct payment is made to a displacee, the file will be documented with the reasons therefor.

(h) *Nonavailability of comparable housing.* When comparable replacement housing is not available and cannot otherwise be made available, the State may provide such housing by methods which include but are not limited to the following:

(1) The purchase of land and/or dwellings. When such acquisitions are made under the State's power of eminent domain, FHWA procedures implementing provisions of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will apply. Title III procedures are not required if property purchased has been offered for sale on the open market or the owner voluntarily acts to sell his property to the State and the owner so certifies in a statement maintained in the State's file.

(2) The rehabilitation of existing dwellings to meet decent, safe, and sanitary requirements provided the cost of acquisition and/or rehabilitation does not exceed the estimated cost of constructing a new comparable dwelling meeting the decent, safe, and sanitary requirements of the displacees that can be constructed on a timely basis.

(3) The relocation and, if necessary, the refurbishing or rehabilitation of dwellings purchased by the State for right-of-way purposes.

(4) The construction of new dwellings, or

(5) The transfer from the General Services Administration to the State of any real property surplus to the needs of the United States. Such transfer shall be subject to such terms and conditions as the General Services Administration determines necessary to protect the interest of the United

States and may be made without monetary consideration, except that the State shall pay to the United States all amounts received by the State from any sale, lease, or other disposition of such property used for replacement housing purposes.

(i) *Ownership or tenancy status.* The responsibility of the State under this Subpart to provide a replacement dwelling which places the displacee in the same ownership or tenancy status as he had prior to displacement, at the request of the displacee, the State may provide a dwelling which changes the ownership or tenancy status of the displacee if such a dwelling is available and can be provided more economically. However, if the computed replacement housing payment for an owner-occupant is less than \$4,000, a supplement not to exceed \$4,000 shall be paid.

(j) *Cooperative agreements.* The State may enter into cooperative agreements with any other Federal State, or local agency or contractor, any individual, firm, association, or corporation for services in connection with these activities. It is expected that the State will, to the greatest extent practicable, utilize the services of Federal, State, or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

#### § 740.115 Programming and authorization

The following activities shall be programmed and authorized as either a last resort housing project or as a separate line item on a Form PR-37, Project Status Record. All aspects of authorized replacement housing at resort are to be reported on Form PR-37, as work class 4 and work type WH.

(a) *Preliminary study and/or resort housing plan.* Whenever it is indicated that a sufficient supply of comparable replacement housing will not be available for all residents at the approved location, the State shall submit a request for program approval to proceed with preliminary study and/or a last resort housing plan as required by §§ 740.117 and 740.118.

When at time of program approval or subsequently, the FHWA may issue a letter of authorization to the State to proceed with the study and/or plan.

(b) *Authorization.* Upon approval of the last resort housing plan, the FHWA may authorize the State to implement the plan.

**116 Federal participation.**

(a) *Eligible costs.* Federal-aid funds participate in the actual reasonable costs incurred by the State in providing last resort housing when incurred in accordance with the provisions of this subpart. Such costs include but are not limited to:

The acquisition price of land or dwellings and costs incidental thereto.

Moving of houses,  
Site development,  
Architect and engineer fee,  
Landscaping,  
Rehabilitation of existing housing.

Construction of new housing.

Legal fees and expenses.

Other expenditures necessary to provide dwelling units which are comparable with other dwellings in the neighborhood in which they are located and acceptable to the general housing market, and

(b) Any direct costs of providing last resort housing incurred by a State or any agency, political subdivision, public agency, or housing advisory committee.

*Federal share.* Federal reimbursement for the costs of last resort housing shall be determined in accordance with the appropriate Federal pro-rata share of funds involved.

**117 Preliminary housing study.**

(a) *Inventory of replacement housing.* Whenever, during the planning, development or execution of a Federal or federally assisted project, it appears that a sufficient supply of comparable, safe, and sanitary replacement housing may not be available to satisfy the requirements of this part or if such housing is not available on a discriminatory or fair housing basis, the State using existing data supplementing it where necessary, to ascertain more precisely the need to

provide housing under this Subpart F, shall:

(1) Prepare an inventory of the characteristics and relocation needs, desires, and intentions of the families and individuals for whom there is a possible need indicated for last resort housing.

(2) Prepare an inventory of available housing which shall include:

(i) Currently available comparable replacement sale and rental housing, and

(ii) Housing planned to be constructed or rehabilitated and which will be available as comparable replacement housing.

The inventories under paragraph (a)(2)(i) and (ii) of this section shall not include housing planned to be removed or demolished by the highway project or by governmental or private agencies.

(3) In preparing such inventories, the State shall consult with Federal, State, or local agencies which may be able to provide such housing or are knowledgeable with respect to housing programs. In order to avoid reliance by more than one displacing agency on the same replacement housing resource, the State shall coordinate with the other displacing agencies with respect to the utilization and allocation of these resources. The timing of the highway project must also be taken into consideration in preparing the inventories.

(b) *Analysis and conclusion.* The State shall correlate and analyze the information contained in the inventories in paragraph (a) of this section. If last resort housing funds are to be utilized, this analysis must reasonably show that the project cannot proceed to actual construction because comparable sale or rental housing is not reasonably anticipated to be available and cannot be made available. The preliminary housing study should conclude with the number and characteristics of dwellings to be provided under last resort housing procedures.

(c) *Combined study and plan.* The preliminary study may be combined with the last resort housing plan provided in § 740.118.

§ 740.118 Last resort housing plan.

(a) *Plan requirements.* If the analysis in the preliminary housing study indicates that the provision of last resort housing is necessary and the FHWA has concurred, the State shall develop or cause to be developed a plan designed to determine the method of producing comparable replacement housing. In the development of the plan, innovative approaches and methods for the provisions of suitable replacement housing are encouraged. A detailed analysis of the needs of each displacee shall be considered when planning the type of housing necessary to meet these needs. The plan shall include:

(1) A statement that the methods proposed in the plan to provide comparable replacement housing can be legally accomplished in accordance with State law,

(2) How, when, and where housing will be provided,

(3) The environmental suitability of the location of the proposed housing,

(4) The environmental impact of the proposed last resort housing and a recommended classification of the action in accordance with § 771.9(b):

(i) When the last resort housing plan indicates that 100 or less last resort housing units must be provided, the discussion of the environmental effects of such housing in the last resort housing plan would ordinarily support a highway authority's recommendation that the action be classified as a nonmajor "Federal" action not requiring an EIS or a negative declaration; the FHWA's approval of the last resort housing plan shall constitute concurrence in the recommended classification,

(ii) A proposed housing project of more than 100 units should ordinarily be considered a major action and requires coordination between the highway authority and FHWA to determine if a supplement to the highway environmental document in accordance with § 771.15 of this chapter must be prepared; the final determination shall be concurred in by the FHWA.

(iii) The size of the last resort housing project should be used merely as a guide and not as an absolute in deter-

mining whether or not a supplement to the highway environmental document must be prepared,

(5) How it will be financed and amount of project funds to be used for such housing:

(i) Contractual arrangement with State and local housing agencies,

(ii) Contractual arrangement with HUD or the Farmers Home Administration,

(iii) Contract with nonprofit or profit organizations experienced in development of housing,

(iv) Interest subsidy payments,

(v) Direct construction by the State,

(6) The prices within the financial means of the families and individuals to be displaced at which the housing will be rented or sold,

(7) The arrangements for making rent levels appropriate for the persons to be rehoused,

(8) The arrangements for housing management,

(9) The disposition of the property from rental, sale, or resale of housing,

(10) How the construction will be monitored, and

(11) Any other comments pertinent to providing replacement housing.

(b) *Consultation.* From the initiation of the last resort housing and continuing during the course of development, the State shall consult with HUD (or the Farmers Home Administration, where appropriate) with the residents to be displaced and their representatives.

(c) *25 units or less.* If the total cost for replacement housing to be provided under this subpart by a single last resort housing project (or in the case of joint development with other projects, by several projects) is fewer than 25 dwelling units or less, the State shall plan and provide such housing without the assistance of an advisory committee or review by other agencies. The plan must be reviewed and approved by the FHWA. The State shall be guided by the HUD project selection criteria and minimum project standards (see paragraphs (e)(1) and (iii) of this section) for comparable Federal housing programs. All such projects shall comply with the policies, regu-

its and procedures specified in § 740.121.

**More than 25 units.** Where more than 25 dwelling units must be provided on a single last resort housing project, the State shall appoint an advisory committee which shall consult with and provide assistance to the State, or its selected organization, in the development of the plan.

The advisory committee shall include representatives of the following: The State and its selected organization, if any.

The chief executive officer of the jurisdiction in which displacement will

State and local agencies knowledgeable regarding housing in the jurisdiction, including but not limited to the housing authority, local redevelopment agency, and centralized relocation agency, if any.

Other appropriate public (e.g., State and areawide planning agencies), private groups knowledgeable regarding housing and the problems of housing discrimination as well as representatives of affected residents to be displaced.

The failure of any person to participate on the committee shall not disqualify the committee from satisfying the requirements of this section.

If the State elects not to develop a last resort housing plan with its own resources, it shall engage a State or local housing agency, or other agency or organization having experience in the administration or conduct of housing programs to develop the last resort housing plan. In such cases, the State shall appoint an advisory committee to work with the agency or organization engaged. The advisory committee shall be constituted and shall function under the provisions of paragraph (b) of this section.

**Submission of the last resort housing plan for review.** Where more than 25 dwelling units are to be provided, the State shall submit the relevant housing plan to HUD (or the Farmers Home Administration, where appropriate) and the Regional State Clearinghouses designated pursuant to OMB Circular No. A-95.

HUD (or the Farmers Home Administration, where appropriate) shall

review and comment on the plan with respect to:

(i) Plan feasibility,

(ii) Project selection criteria in determining priority of funding projects under Sections 235(i) and 236 of the National Housing Act (12 U.S.C. 1701 and 1701z-1), rent supplement projects and low rent housing application under the U.S. Housing Act of 1937 (42 U.S.C. 1401 et seq.),

(iii) Minimum property standards for:

(A) One and two family dwellings (HUD 4900.1),

(B) Multifamily housing (HUD 4910.1),

(C) Care-type housing (HUD 4920.1),

(D) Manual of acceptable practices (HUD 4930).

(E) Mobile home construction and safety standards (24 CFR 280.1 et seq.).

(iv) Environmental standards and procedures as provided in paragraphs (a)(3) and (4) of this section,

(v) Compatibility with local and areawide housing plans, provided that such plans are in compliance with § 740.121, and

(vi) Compliance with the Civil Rights Acts and Executive Orders specified in § 740.121.

(2) HUD (or the Farmers Home Administration, where appropriate) shall review the plan and submit comments to the State within 30 calendar days after receipt of the plan. If necessary for timely implementation of the plan or execution of the projects, the State may shorten the time allowed for review and comment to some reasonable period less than 30 days.

(f) *Revision of last resort housing plan after review.* Upon receipt and consideration of the comments on the plan, the State shall revise the plan, if deemed necessary by the State, to correct negative comments resulting from the above reviews.

(g) *Review of substantial modifications.* Any substantial modifications in the plan, except those made in accordance with such comments, should be resubmitted for review and comments unless time does not permit. Whenever an amended plan is resubmitted for review and comments, a copy may also

be provided to the advisory committee for simultaneous review.

(h) *State determination of compliance.* Subsequent to receipt of review comments and modification of the plan, if deemed necessary, or if the 30-day review period has passed without receiving any comments, the State shall make a determination that the plan is in substantial compliance with paragraph (e) of this section and shall submit it to the FHWA for approval or disapproval.

(i) *Aggregate housing under jointly financed programs.* Where several agencies are administering programs resulting in residential displacement, opportunities shall be sought out for joint development and financing in order to aggregate their resources to provide replacement housing in sufficient quantity to satisfy the aggregate needs of such programs.

[41 FR 48682, Nov. 4, 1976, as amended at 41 FR 54756, Dec. 15, 1976; 48 FR 29274, June 24, 1983]

**§ 740.119 Implementation of housing plan.**

(a) *Use of other agencies.* Whenever practicable, the State may utilize the services of Federal, State, or local housing agencies, or other agencies, groups or individuals having experience in the administration or conduct of similar housing programs.

(b) *Inspection of construction.* The State shall monitor, with its own forces or qualified fee personnel, the construction of replacement housing to assure that it is in accordance with the last resort housing plan. A final inspection shall be made and the signed certification of acceptability of the construction shall be in the State files.

(c) *Utilization of small and minority firms.* The use of small and minority firms located in or near the project area, and the employment of residents of the project area, are encouraged.

**§ 740.120 Advice and technical assistance by HUD and other Federal agencies.**

Throughout the entire planning, development, and implementation process, the HUD area or Insuring Office Director will provide the State with advice, technical assistance and general information requested by the State. HUD will also review pending applica-

tions for housing subsidy assistance mortgage insurance to determine effect on any estimated replacement housing deficit and keep the State advised as applications are received commitments are made that are likely to affect any estimated deficit. Where appropriate, the Farmers Home Administration will provide the same with similar assistance.

**§ 740.121 Compliance with other state laws.**

The development and implementation of last resort housing projects shall be in compliance with the applicable provisions of the following laws, including the amendments and regulations issued pursuant thereto:

(a) Section 1 of the Civil Rights Act of 1866 (42 U.S.C. 1982 et seq.).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.).

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4347).

(e) Executive Order 11063 (Equal Opportunity in Housing) 3 Comp. 1959-1963, page 652.

(f) Executive Order 11246 (Equal Employment Opportunity) 3 Comp. 1964-1965, page 339 or Federal Laws, Regulations and Materials relating to the Federal Highway Administration, page IV-41, and

(g) Executive Order 11625 (Minor Business Enterprise) 3 CFR 1971, page 213.

**APPENDIX A—FORMAT FOR COMPUTATION OF INTEREST PAYMENT**

**REQUIRED INFORMATION**

1. Outstanding balance of mortgage required dwelling—\$
2. Outstanding balance of mortgage placement dwelling—\$
3. Lesser of Line 1 or Line 2—\$
4. Number of months remaining until payment is due for mortgage on required dwelling—
5. Number of months remaining until payment is due for mortgage on replacement dwelling—
6. Lesser of Line 4 or 5—
7. Annual interest rate of mortgage on required dwelling—

Annual interest rate of mortgage on replacement dwelling (or, if it is lower, the prevailing annual interest rate currently charged by mortgage lending institutions in general area in which the replacement dwelling is located) (percent) \_\_\_\_\_

Prevailing interest rate paid on savings deposits by commercial banks (percent) \_\_\_\_\_

If applicable, any debt service costs on loan on the replacement dwelling, such as points paid by the purchaser which are reimbursable as an incidental expense \_\_\_\_\_ \$

#### Developing of Monthly Payment Figures

Monthly payment required to amortize loan of \_\_\_\_\_ \$ (Line 3) in \_\_\_\_\_ months at an annual interest rate of \_\_\_\_\_ % \_\_\_\_\_ \$

Monthly payment required to amortize loan of \_\_\_\_\_ \$ (Line 3) in \_\_\_\_\_ months at an annual interest rate of \_\_\_\_\_ % \_\_\_\_\_ \$

Monthly payment required to amortize loan of \_\_\_\_\_ \$ (Line 3) in \_\_\_\_\_ months at an annual interest rate of \_\_\_\_\_ % \_\_\_\_\_ \$

#### Calculation of Interest Payment

Step 1—Subtract A from B:  
Monthly payment based on rate for replacement dwelling (B) \_\_\_\_\_ \$  
Monthly payment based on rate for acquired dwelling (A) \_\_\_\_\_ \$  
Result (difference) \_\_\_\_\_ \$

Step 2—Divide result (difference) of Step 1 (carry to 6 Decimal places) \_\_\_\_\_ \$  
Result (difference) from Step 1 \_\_\_\_\_ \$  
Monthly payment based on savings rate \_\_\_\_\_ \$

Result (quotient) \_\_\_\_\_ \$

Step 3—Multiply outstanding balance of mortgage on acquired dwelling by result (quotient) of \_\_\_\_\_ \$

Outstanding Balance (from Line \_\_\_\_\_ \$

Result (quotient) of Step 2  $\times$  \_\_\_\_\_ \$  
Result (product) \_\_\_\_\_ \$

Step 4—Add to result (product) of Step 3 debt service costs on the loan on the replacement dwelling:

Result (product of Step 3, first mortgage) \_\_\_\_\_ \$  
Result (product) of Step 3, second mortgage \_\_\_\_\_ \$

If there is more than one outstanding mortgage on an acquired dwelling, the distributed value of each mortgage must be determined. To do this, a separate computation is made to each mortgage through Step 4 and consolidated Step 4 is then completed.

Sum or difference, as applicable \_\_\_\_\_ \$  
Add debt service costs on loan on replacement dwelling (Line 10) \_\_\_\_\_ \$  
Amount of interest payment \_\_\_\_\_ \$

[47 FR 6619, Feb. 16, 1982]

## PART 750—HIGHWAY BEAUTIFICATION

### Subpart A—National Standards for Regulation by States of Outdoor Advertising Adjacent to the Interstate System Under the 1958 Bonus Program

#### Sec.

- 750.101 Purpose.
- 750.102 Definitions.
- 750.103 Measurements of distance.
- 750.104 Signs that may not be permitted in protected areas.
- 750.105 Signs that may be permitted in protected areas.
- 750.106 Class 3 and 4 signs within informational sites.
- 750.107 Class 3 and 4 signs outside informational sites.
- 750.108 General provisions.
- 750.109 Exclusions.
- 750.110 State regulations.

### Subpart B—National Standards for Directional and Official Signs

- 750.151 Purpose.
- 750.152 Application.
- 750.153 Definitions.
- 750.154 Standards for directional signs.
- 750.155 State standards.

### Subpart C—[Reserved]

### Subpart D—Outdoor Advertising (Acquisition of Rights of Sign and Sign Site Owners)

- 750.301 Purpose.
- 750.302 Policy.
- 750.303 Definitions.
- 750.304 State policies and procedures.
- 750.305 Federal participation.
- 750.306 Documentation for Federal participation.
- 750.307 FHWA project approval.
- 750.308 Reports.

### Subpart E—Signs Exempt From Removal in Defined Areas

- 750.501 Purpose.
- 750.502 Applicability.
- 750.503 Exemptions.



Sec.

**Subpart F—[Reserved]**

**Subpart G—Outdoor Advertising Control**

- 750.701 Purpose.
- 750.702 Applicability.
- 750.703 Definitions.
- 750.704 Statutory requirements.
- 750.705 Effective control.
- 750.706 Sign control in zoned and unzoned commercial and industrial areas.
- 750.707 Nonconforming signs.
- 750.708 Acceptance of state zoning.
- 750.709 On-property or on-premise advertising.
- 750.710 Landmark signs.
- 750.711 Structures which have never displayed advertising material.
- 750.712 Reclassification of signs.
- 750.713 Bonus provisions.

SOURCE: 38 FR 16044, June 20, 1973, unless otherwise noted.

**Subpart A—National Standards for Regulation by States of Outdoor Advertising Adjacent to the Interstate System Under the 1958 Bonus Program**

AUTHORITY: Sec. 12, Pub. L. 85-381, 72 Stat. 95, as amended; 23 U.S.C. 131; delegation of authority in 49 CFR 1.48(b).

**§ 750.101 Purpose.**

(a) In section 12 of the Federal-Aid Highway Act of 1958, Pub. L. 85-381, 72 Stat. 95, hereinafter called the "act," the Congress declared that:

(1) To promote the safety, convenience, and enjoyment of public travel and the free flow of interstate commerce and to protect the public investment in the National System of Interstate and Defense Highways, hereinafter called the "Interstate System," it is in the public interest to encourage and assist the States to control the use of and to improve areas adjacent to such system by controlling the erection and maintenance of outdoor advertising signs, displays, and devices adjacent to that system.

(2) It is a national policy that the erection and maintenance of outdoor advertising signs, displays, or devices within 660 feet of the edge of the right-of-way and visible from the main-traveled way of all portions of the Interstate System constructed upon any part of right-of-way, the

entire width of which is acquired subsequent to July 1, 1956, should be regulated, consistent with national standards to be prepared and promulgated by the Secretary of Transportation.

(b) The standards in this part are hereby promulgated as provided in the act.

[38 FR 16044, June 20, 1973, as amended 39 FR 28629, Aug. 9, 1974]

**§ 750.102 Definitions.**

The following terms when used in the standards in this part have the following meanings:

(a) Acquired for right-of-way means acquired for right-of-way for a public road by the Federal Government, a State, or a county, city, or other political subdivision of a State by donation, dedication, purchase, condemnation, use, or otherwise. The date of acquisition shall be the date upon which title (whether fee title or a lesser interest) vested in the public for right-of-way purposes under applicable Federal or State law.

(b) Centerline of the highway means a line equidistant from the edges of the median separating the main-traveled ways of a divided Interstate Highway, or the centerline of the main-traveled way of a nondivided Interstate Highway.

(c) Controlled portion of the Interstate System means any portion which:

(1) Is constructed upon any part of right-of-way, the entire width of which is acquired for right-of-way subsequent to July 1, 1956 (a portion shall be deemed so constructed if, within such portion, no line normal or perpendicular to the centerline of the highway and extending to both edges of the right-of-way will intersect the right-of-way acquired for right-of-way on or before July 1, 1956);

(2) Lies within a State, the highway department of which has entered into an agreement with the Secretary of Transportation as provided in the act and

(3) Is not excluded under the terms of the act which provide that agreements entered into between the Secretary of Transportation and the State highway department shall not apply

those segments of the Interstate System which traverse commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use as of September 1959, was clearly established by State law as industrial or commercial.

(b) **Entrance roadway** means any highway, road or turning roadway, including acceleration lanes, by which traffic may enter the main-traveled way of an Interstate Highway from the general road system within a State, irrespective of whether traffic also leaves the main-traveled way by such road or turning roadway.

(c) **Erect** means to construct, build, assemble, place, affix, attach, write, paint, draw, or in any other way bring into being or establish.

(d) **Exit roadway** means any public highway or turning roadway including deceleration lanes, by which traffic may leave the main-traveled way of an Interstate Highway to reach the general road system within a State, irrespective of whether traffic may also enter the main-traveled way by such road or turning roadway.

(e) **Informational site** means an area of land established and maintained wholly or in part on or adjacent to the right-of-way of a highway on the Interstate System and under the supervision or control of a State highway department, wherein panels for the display of advertising and informational signs may be erected and maintained.

(f) **Legible** means capable of being read without visual aid by a person of normal visual acuity.

(g) **Maintain** means to allow to exist.

(h) **Main-traveled way** means the traveled way of an Interstate Highway through which traffic is carried. In the case of a divided highway, the traveled way of each of the separated ways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(i) **Protected areas** means all areas within the boundaries of a State which

are adjacent to and within 660 feet of the edge of the right-of-way of all controlled portions of the Interstate System within that State. Where a controlled portion of the Interstate System terminates at a State boundary which is not perpendicular or normal to the centerline of the highway, protected areas also means all areas inside the boundary of such State which are within 660 feet of the edge of the right-of-way of the Interstate Highway in the adjoining State.

(j) **Scenic area** means any public park or area of particular scenic beauty or historical significance designated by or pursuant to State law as a scenic area.

(k) **Sign** means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of a controlled portion of the Interstate System.

(l) **State** means the District of Columbia and any State of the United States within the boundaries of which a portion of the Interstate System is located.

(m) **State law** means a State constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a State agency or political subdivision of a State pursuant to State constitution or statute.

(n) **Trade name** shall include brand name, trademark, distinctive symbol, or other similar device or thing used to identify particular products or services.

(o) **Traveled way** means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(p) **Turning roadway** means a connecting roadway for traffic turning between two intersection legs of an interchange.

(q) **Visible** means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

§ 750.103 Measurements of distance.

(a) Distance from the edge of a right-of-way shall be measured horizontally along a line normal or perpendicular to the centerline of the highway.

(b) All distances under § 750.107 (a)(2) and (b) shall be measured along the centerline of the highway between two vertical planes which are normal or perpendicular to and intersect the centerline of the highway, and which pass through the termini of the measured distance.

[38 FR 16044, June 20, 1973, as amended at 41 FR 9321, Mar. 4, 1976]

§ 750.104 Signs that may not be permitted in protected areas.

Erection or maintenance of the following signs may not be permitted in protected areas:

(a) Signs advertising activities that are illegal under State or Federal laws or regulations in effect at the location of such signs or at the location of such activities.

(b) Obsolete signs.

(c) Signs that are not clean and in good repair.

(d) Signs that are not securely affixed to a substantial structure, and

(e) Signs that are not consistent with the standards in this part.

§ 750.105 Signs that may be permitted in protected areas.

(a) Erection or maintenance of the following signs may be permitted in protected areas:

*Class 1—Official signs.* Directional or other official signs or notices erected and maintained by public officers or agencies pursuant to and in accordance with direction or authorization contained in State or Federal law, for the purpose of carrying out an official duty or responsibility.

*Class 2—On-premise signs.* Signs not prohibited by State law which are consistent with the applicable provisions of this section and § 750.108 and which advertise the sale or lease of, or activities being conducted upon, the real property where the signs are located.

Not more than one such sign advertising the sale or lease of the same property may be permitted under this class in such manner as to be visible to traffic proceeding in any one direction on any one Interstate Highway.

Not more than one such sign, visible to traffic proceeding in any one direction on any one Interstate Highway and advertising activities being conducted upon the real property where the sign is located, may be permitted under this class more than 50 feet from the advertised activity.

*Class 3—Signs within 12 miles of advertised activities.* Signs not prohibited by State law which are consistent with the applicable provisions of this section and §§ 750.106, 750.107, and 750.108 and which advertise activities being conducted within 12 air miles of such signs.

*Class 4—Signs in the specific interest of the traveling public.* Signs authorized to be erected or maintained by State law which are consistent with the applicable provisions of this section and §§ 750.106, 750.107, and 750.108 and which are designed to give information in the specific interest of the traveling public.

(b) A Class 2 or 3 sign, except a Class 2 sign not more than 50 feet from the advertised activity, that displays a trade name which refers to or identifies any service rendered or product sold, used, or otherwise handled more than 12 air miles from such sign may not be permitted unless the name identifies the advertised activity which is within 12 air miles of such sign is displayed conspicuously as such trade name.

(c) Only information about public places operated by Federal, State, or local governments, natural phenomena, historic sites, areas of natural scenic beauty or naturally suited outdoor recreation and places for camping, lodging, eating, and vehicle service and repair is deemed to be in the specific interest of the traveling public. For the purposes of the standards in this part, a trade name is deemed to be information in the specific interest of the traveling public only if it identifies or characterizes such a place or identifies vehicle service, equipment, parts, accessories, fuels, oils, or lubricants being offered for sale at such a place. Signs displaying any other trade name may not be permitted under Class 4.

(d) Notwithstanding the provisions of paragraph (b) of this section, Class 2 or Class 3 signs which also qualify as Class 4 signs may display trade names in accordance with the provisions of paragraph (c) of this section.

**750.106 Class 3 and 4 signs within informational sites.**

(a) Informational sites for the erection and maintenance of Class 3 and 4 advertising and informational signs may be established in accordance with 1.35 of this chapter. The location and frequency of such sites shall be as determined by agreements between the Secretary of Transportation and the State highway departments.

(b) Class 3 and 4 signs may be permitted within such informational sites protected areas in a manner consistent with the following provisions:

1) No sign may be permitted which not placed upon a panel.

2) No panel may be permitted to exceed 13 feet in height or 25 feet in width, including border and trim, but including supports.

3) No sign may be permitted to exceed 12 square feet in area, and nothing on such sign may be permitted to be legible from any place on the untraveled way or a turning roadway.

4) Not more than one sign concerning a single activity or place may be permitted within any one informational site.

5) Signs concerning a single activity or place may be permitted within more than one informational site, but no Class 3 sign which does not also qualify as a Class 4 sign may be permitted within any informational site more than 12 air miles from the advertised activity.

6) No sign may be permitted which moves or has any animated or moving parts.

7) Illumination of panels by other than white lights may not be permitted, and no sign placed on any panel may be permitted to contain, include, or be illuminated by any other lights, including any flashing, intermittent, or moving lights.

8) No lighting may be permitted to be used in any way in connection with any panel unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the Interstate System, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise

interfere with any driver's operation of a motor vehicle.

[23 FR 8793, Nov. 13, 1958, as amended at 35 FR 18719, Dec. 10, 1970; 41 FR 9321, Mar. 4, 1976]

**§ 750.107 Class 3 and 4 signs outside informational sites.**

(a) The erection or maintenance of the following signs may be permitted within protected areas, outside informational sites:

(1) Class 3 signs which are visible only to Interstate highway traffic not served by an informational site within 12 air miles of the advertised activity;

(2) Class 4 signs which are more than 12 miles from the nearest panel within an informational site serving Interstate highway traffic to which such signs are visible.

(3) Signs that qualify both as Class 3 and 4 signs may be permitted in accordance with either paragraph (a)(1) or (2) of this section.

(b) The erection or maintenance of signs permitted under paragraph (a) of this section may not be permitted in any manner inconsistent with the following:

(1) In protected areas in advance of an intersection of the main-traveled way of an Interstate highway and an exit roadway, such signs visible to Interstate highway traffic approaching such intersection may not be permitted to exceed the following number:

| Distance from intersection | Number of signs               |
|----------------------------|-------------------------------|
| 0-2 miles .....            | 0.                            |
| 2-5 miles .....            | 6.                            |
| More than 5 miles .....    | Average of one sign per mile. |

The specified distances shall be measured to the nearest point of the intersection of the traveled way of the exit roadway and the main-traveled way of the Interstate highway.

(2) Subject to the other provisions of this paragraph, not more than two such signs may be permitted within any mile distance measured from any point, and no such signs may be permitted to be less than 1,000 feet apart.

(3) Such signs may not be permitted in protected areas adjacent to any Interstate highway right-of-way upon any part of the width of which is constructed an entrance or exit roadway.

(4) Such signs visible to Interstate highway traffic which is approaching or has passed an entrance roadway may not be permitted in protected areas for 1,000 feet beyond the furthest point of the intersection between the traveled way of such entrance roadway and the main-traveled way of the Interstate highway.

(5) No such signs may be permitted in scenic areas.

(6) Not more than one such sign advertising activities being conducted as a single enterprise or giving information about a single place may be permitted to be erected or maintained in such manner as to be visible to traffic moving in any one direction on any one Interstate highway.

(c) No Class 3 or 4 signs other than those permitted by this section may be permitted to be erected or maintained within protected areas, outside informational sites.

#### § 750.108 General provisions.

No Class 3 or 4 signs may be permitted to be erected or maintained pursuant to § 750.107, and no Class 2 sign may be permitted to be erected or maintained, in any manner inconsistent with the following:

(a) No sign may be permitted which attempts or appears to attempt to direct the movement of traffic or which interferes with, imitates or resembles any official traffic sign, signal or device.

(b) No sign may be permitted which prevents the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic.

(c) No sign may be permitted which contains, includes, or is illuminated by any flashing, intermittent or moving light or lights.

(d) No lighting may be permitted to be used in any way in connection with any sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the Interstate System, or is of such low in-

tensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

(e) No sign may be permitted which moves or has any animated or moving parts.

(f) No sign may be permitted to be erected or maintained upon trees painted or drawn upon rocks or other natural features.

(g) No sign may be permitted to exceed 20 feet in length, width, height, or 150 square feet in area, including border and trim but excluding supports, except Class 2 signs more than 50 feet from, and advertising activities being conducted upon the real property where the sign is located.

#### § 750.109 Exclusions.

The standards in this part shall not apply to markers, signs and plaques of appreciation of sites of historical significance for the erection of which provisions are made in an agreement between a State and the Secretary of Transportation, as provided in the Act, unless such agreement expressly makes all or any part of the standards applicable.

#### § 750.110 State regulations.

A State may elect to prohibit signs permissible under the standards in this part without forfeiting its right to any benefits provided for in the Act.

### Subpart B—National Standards for Directional and Official Signs

**AUTHORITY:** 23 U.S.C. 131, 315, 49 U.S.C. 1651; 49 CFR 1.48(b).

#### § 750.151 Purpose.

(a) In section 131 of title 23, United States Code, Congress has declared that:

(1) The erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote safety and

recreational value of public travel, and to preserve natural beauty.

(2) Directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, shall conform to national standards authorized to be promulgated by the Secretary, which standards shall contain provisions concerning the lighting, size, number and spacing of signs, and such other requirements as may be appropriate to implement the section.

(b) The standards in this part are used as provided in Section 131 of title 23, United States Code.

FR 18044, June 30, 1973, as amended at FR 21934, May 20, 1975]

#### 50.152 Application.

The following standards apply to directional and official signs and notices located within six hundred and sixty (660) feet of the right-of-way of the Interstate and Federal-aid primary systems and to those located beyond six hundred and sixty (660) feet of the right-of-way of such systems, outside urban areas, visible from the main traveled way of such systems and erected with the purpose of their message being read from such main traveled way. These standards do not apply to directional and official signs erected on the highway right-of-way.

FR 21934, May 20, 1975]

#### 50.153 Definitions.

For the purpose of this part:

(a) Sign means an outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise, inform, any part of the advertising or informative contents of which is visible from any place on the main traveled way of the Interstate or Federal-aid primary highway.

(b) Main traveled way means the through traffic lanes of the highway, exclusive of frontage roads, auxiliary lanes, and ramps.

(c) Interstate System means the National System of Interstate and De-

fence Highways described in Section 103(d) of title 23, United States Code.

(d) Primary system means the Federal-aid highway system described in Section 103(b) of title 23, United States Code.

(e) Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(f) Maintain means to allow to exist.

(g) Scenic area means any area of particular scenic beauty or historical significance as determined by the Federal, State, or local officials having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation, and enhancement of scenic beauty.

(h) Parkland means any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.

(i) Federal or State law means a Federal or State constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a State or Federal agency or a political subdivision of a State pursuant to a Federal or State constitution or statute.

(j) Visible means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(k) Freeway means a divided arterial highway for through traffic with full control of access.

(l) Rest area means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control for the convenience of the traveling public.

(m) Directional and official signs and notices includes only official signs and notices, public utility signs, service club and religious notices, public service signs, and directional signs.

(n) Official signs and notices means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in Federal, State, or local law for the purposes of carrying out an official duty or re-

sponsibility. Historical markers authorized by State law and erected by State or local government agencies or nonprofit historical societies may be considered official signs.

(o) Public utility signs means warning signs, informational signs, notices, or markers which are customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations.

(p) Service club and religious notices means signs and notices, whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious services, which signs do not exceed 8 square feet in area.

(q) Public service signs means signs located on school bus stop shelters, which signs:

(1) Identify the donor, sponsor, or contributor of said shelters;

(2) Contain public service messages, which shall occupy not less than 50 percent of the area of the sign;

(3) Contain no other message;

(4) Are located on schoolbus shelters which are authorized or approved by city, county, or State law, regulation, or ordinance, and at places approved by the city, county, or State agency controlling the highway involved; and

(5) May not exceed 32 square feet in area. Not more than one sign on each shelter shall face in any one direction.

(r) Directional signs means signs containing directional information about public places owned or operated by Federal, State, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.

(s) State means any one of the 50 States, the District of Columbia, or Puerto Rico.

(t) Urban area means an urbanized area or, in the case of an urbanized area encompassing more than one State, that part of the urbanized areas in each such State, or an urban place as designated by the Bureau of the Census having a population of five thousand or more and not within any urbanized area, within boundaries to

be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census.

[38 FR 16044, June 30, 1973, as amended; 40 FR 21934, May 20, 1975]

§ 750.154 Standards for directional signs.

The following apply only to directional signs:

(a) *General.* The following signs are prohibited:

(1) Signs advertising activities that are illegal under Federal or State law or regulations in effect at the location of those signs or at the location of those activities.

(2) Signs located in such a manner to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of a approaching, merging, or intersecting traffic.

(3) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(4) Obsolete signs.

(5) Signs which are structurally unsafe or in disrepair.

(6) Signs which move or have an animated or moving parts.

(7) Signs located in rest areas, parklands or scenic areas.

(b) *Size.* (1) No sign shall exceed the following limits:

(i) Maximum area—150 square feet.

(ii) Maximum height—20 feet.

(iii) Maximum length—20 feet.

(2) All dimensions include borders and trim, but exclude supports.

(c) *Lighting.* Signs may be illuminated, subject to the following:

(1) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(2) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor

vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(3) No sign may be so illuminated as to interfere with the effectiveness of an official traffic sign, device, or signal.

(d) *Spacing.* (1) Each location of a directional sign must be approved by the State highway department.

(2) No directional sign may be located within 2,000 feet of an interchange, intersection at grade along the Interstate System or other freeways measured along the Interstate or away from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to a main traveled way).

(3) No directional sign may be located within 2,000 feet of a rest area, island, or scenic area.

(4)(i) No two directional signs facing the same direction of travel shall be spaced less than 1 mile apart;

(ii) Not more than three directional signs pertaining to the same activity facing the same direction of travel may be erected along a single route approaching the activity;

(iii) Signs located adjacent to the Interstate System shall be within 75 miles of the activity; and

(iv) Signs located adjacent to the primary system shall be within 50 air miles of the activity.

(e) *Message content.* The message on directional signs shall be limited to the notification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers. Descriptive words or phrases, and pictorial or photographic representations of the activity or its environs are prohibited.

(f) *Selection method and criteria.* (1) Privately owned activities or attractions eligible for directional signing are limited to the following: natural phenomena; scenic attractions; historical, educational, cultural, scientific, and religious sites; and outdoor recreation areas.

(2) To be eligible, privately owned attractions or activities must be nationally or regionally known, and of longstanding interest to the traveling public.

(3) Each State shall develop specific selection methods and criteria to be used in determining whether or not an activity qualifies for this type of signing. A statement as to selection methods and criteria shall be furnished to the Secretary of Transportation before the State permits the erection of any such signs under section 131(c) of title 23, United States Code, and this part.

#### § 750.155 State standards.

This part does not prohibit a State from establishing and maintaining standards which are more restrictive with respect to directional and official signs and notices along the Federal-aid highway systems than these national standards.

[38 FR 16044, June 20, 1973, as amended at 40 FR 21934, May 20, 1975]

### Subpart C—[Reserved]

### Subpart D—Outdoor Advertising (Acquisition of Rights of Sign and Sign Site Owners)

**AUTHORITY:** 23 U.S.C. 131 and 315; 23 CFR 1.32 and 1.48(b).

**SOURCE:** 39 FR 27436, July 29, 1974, unless otherwise noted.

#### § 750.301 Purpose.

To prescribe the Federal Highway Administration (FHWA) policies relating to Federal participation in the costs of acquiring the property interests necessary for removal of nonconforming advertising signs, displays and devices on the Federal-aid Primary and Interstate Systems, including toll sections on such systems, regardless of whether Federal funds participated in the construction thereof. This regulation should not be construed to authorize any additional rights in eminent domain not already existing under State law or under 23 U.S.C. 131(g).

#### § 750.302 Policy.

(a) Just compensation shall be paid for the rights and interests of the sign and site owner in those outdoor advertising signs, displays, or devices which



are lawfully existing under State law, in conformance with the terms of 23 U.S.C. 131.

(b)(1) Federal reimbursement will be made on the basis of 75 percent of the acquisition, removal and incidental costs legally incurred or obligated by the State.

(2) Federal funds will participate in 100 percent of the costs of removal of those signs which were removed prior to January 4, 1975, by relocation, pursuant to the provisions of 23 CFR § 750.305(a)(2), and which are required to be removed as a result of the amendments made to 23 U.S.C. § 131 by the Federal-Aid Highway Amendments of 1974, P.L. 93-643, § 109, January 4, 1975. Such signs must have been relocated to a legal site, must have been legally maintained since the relocation, and must not have been substantially changed, as defined by the State maintenance standards, issued pursuant to 23 CFR § 750.707(b).

(c) Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651, et seq.) applies except where complete conformity would defeat the purposes set forth in 42 U.S.C. 4651, would impede the expeditious implementation of the sign removal program or would increase administrative costs out of proportion to the cost of the interests being acquired or extinguished.

(d) Projects for the removal of outdoor advertising signs including hardship acquisitions should be programed and authorized in accordance with normal program procedures for right-of-way projects.

[39 FR 27436, July 29, 1974; 39 FR 30349, Aug. 22, 1974, as amended at 41 FR 31198, July 27, 1976]

#### § 750.303 Definitions.

(a) *Sign*. An outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard or other thing which is designed, intended of the advertising or informative contents of which is visible from any place on the main-traveled way of the Interstate or Primary Systems, whether the same be permanent or portable installation.

(b) *Lease (license, permit, agreement, contract or easement)*. An agreement, oral or in writing, by which possession or use of land or interests therein is given by the owner or other person to another person for a specified purpose.

(c) *Leasehold value*. The leasehold value is the present worth of the difference between the contractual rent and the current market rent at the time of the appraisal.

(d) *Illegal sign*. One which was erected and/or maintained in violation of State law.

(e) *Nonconforming sign*. One which was lawfully erected, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State law or State regulations due to changed conditions. Includes legally erected or maintained signs and not nonconforming signs.

(f) *1966 inventory*. The record of the survey of advertising signs and junkyards compiled by the State highway department.

(g) *Abandoned sign*. One in which one has an interest, or as defined by State law.

#### § 750.304 State policies and procedures.

The State's written policies and operating procedures for implementing its sign removal program under State law and complying with 23 U.S.C. 131 and its proposed time schedule for sign removal and procedure for reporting its accomplishments shall be submitted to the FHWA for approval within 90 days of the date of this regulation. This statement should be supported by the State's regulations implementing its program. Revisions to the State's policies and procedures shall be submitted to the FHWA for approval. The statement should contain provisions for the review of its policies and procedure to meet changing conditions, adoption of improved procedures, and for internal review to assure compliance. The statement shall include as a minimum the following:

(a) *Project priorities*. The following order of priorities is recommended.

(1) Illegal and abandoned signs.

- ) Hardship situations.
- ) Nominal value signs.
- ) Signs in areas which have been designated as scenic under authority of State law.
- ) Product advertising on:
- ) Rural interstate highway.
- ) Rural primary highway.
- ) Urban areas.
- ) Nontourist-oriented directional advertising.
- ) Tourist-oriented directional advertising.

**Programming.** (1) A sign removal project may consist of any group of selected sign removals. The signs may be those belonging to one company or located along a single route, all the signs in a single county or other territory, hardship situations, individual or grouped, such as those involuntarily standardized signs, or all of a sign owner's signs in a given State or area, or similar grouping.

A project for sign removal on a basis other than a Federal-aid primary basis e.g., a countywide project involving only signs owned by one company, should be identified as FH-000B( ), continuing the numbering sequence which began with the inventory project in 1966.

Where it would not interfere with the State's operations, the State department program sign removal projects minimize disruption of business.

**Valuation and review methods—Schedules—formulas.** Schedules, formulas or other methods to simplify the taking of signs and sites are recommended for the purpose of minimizing administrative and legal expenses necessarily involved in determining just compensation by individual appraisals and litigation. They do not purport to be a basis for the determination of compensation under eminent domain.

**Appraisals.** Where appropriate, the State may use its approved appraisal report forms including those abbreviated or short form appraisals. Where a sign or site owner does not accept the amount computed under an approved schedule, formula, or other simplified method, an appraisal shall be utilized.

**Leaseholds.** When outdoor advertising signs and sign sites involve a

leasehold value, the State's procedures should provide for determining value in the same manner as any other real estate leasehold that has value to the lessee.

(4) **Severance damages.** The State has the responsibility of justifying the recognition of severance damages pursuant to 23 CFR 710.204, and the law of the State before Federal participation will be allowed. Generally, Federal participation will not be allowed in the payment of severance damages to remaining signs, or other property of a sign company alleged to be due to the taking of certain of the company's signs. Unity of use of the separate properties, as required by applicable principles of eminent domain law, must be shown to exist before participation in severance damages will be allowed. Moreover, the value of the remaining signs or other real property must be diminished by virtue of the taking of such signs. Payments for severance damages to economic plants or loss of business profits are not compensable. Severance damage cases must be submitted to the FHWA for prior concurrence, together with complete legal and appraisal justification for payment of these damages. To assist the FHWA in its evaluation, the following data will accompany any submission regarding severance:

(i) One copy of each appraisal in which this was analyzed. One copy of the State's review appraiser analysis and determination of market value.

(ii) A plan or map showing the location of each sign.

(iii) An opinion by the State highway department's chief legal officer that severance is appropriate in accordance with State law together with a legal opinion that, in the instant case, the damages constitute severance as opposed to consequential damage as a matter of law. The opinion shall include a determination, and the basis therefor, that the specific taking of some of an outdoor advertiser's signs constitutes a distinct economic unit, and that unity of use of the separate properties in conformity with applicable principles of eminent domain law had been satisfactorily established. A legal memorandum must be furnished citing and discussing cases and other

authorities supporting the State's position.

(5) *Review of value estimates.* All estimates of value shall be reviewed by a person other than the one who made the estimate. Appraisal reports shall be reviewed and approved prior to initiation of negotiations. All other estimates shall be reviewed before the agreement becomes final.

(d) *Nominal value plan.* (1) This plan may provide for the removal costs of eligible nominal value signs and for payments up to \$250 for each nonconforming sign, and up to \$100 for each nonconforming sign site.

(2) The State's procedures may provide for negotiations for sign sites and sign removals to be accomplished simultaneously without prior review.

(3) Releases or agreements executed by the sign and/or site owner should include the identification of the sign, statement of ownership, price to be paid, interest acquired, and removal rights.

(4) It is not expected that salvage value will be a consideration in most acquisitions; however, the State's procedures may provide that the sign may be turned over to the sign owner, site owner, contractor, or individual as all or a part of the consideration for its removal, without any project credits.

(5) *Programming and authorizations* will be in accord with § 750.308 of this regulation. A detailed estimate of value of each individual sign is not necessary. The project may be programmed and authorized as one project.

(e) *Sign removal.* The State's procedural statement should include provision for:

- (1) Owner retention.
- (2) Salvage value.
- (3) State removal.

[39 FR 27436, July 29, 1974; 42 FR 30835, June 17, 1977]

#### § 750.305 Federal participation.

(a) Federal funds may participate in:

(1) Payments made to a sign owner for his right, title and interest in a sign, and where applicable, his leasehold value in a sign site, and to a site owner for his right and interest in a site, which is his right to erect and maintain the existing nonconforming sign on such site.

(2) The cost of relocating a sign, the extent of the cost to acquire sign, less salvage value if any.

(3) A duplicate payment for the owner's interest of \$2,500 or less cause of a bona fide error in ownership, provided the State has followed its title search procedures as set forth in its policy and procedure manuals.

(4) The cost of removal of signs, partially completed sign structures, supporting poles, abandoned signs those which are illegal under State law within the controlled areas, provided such costs are incurred in accordance with State law. Removal may be by State personnel on a force account basis or by contract. Documentation for Federal participation in such removal projects should be in accord with the State's normal accounting and contractual reimbursement procedures. The State shall maintain a record of the number of signs removed. These data should be retained in project records and reported on the periodic report required under § 750.308 of this regulation.

(5) Signs materially damaged by vandalism. Federal funds shall be limited to the Federal pro-rata share of the market value of the sign immediately before the vandalism occurred minus the estimated cost of repairing and erecting the sign. If the State chooses, it may use its FHWA approved nominal value plan procedure to acquire these signs.

(6) The cost of acquiring and installing completed sign structures which have been blank or painted beyond the period of time established by the State for normal maintenance and change of message, provided the sign owner can establish that his nonconforming use was not abandoned or discontinued, and provided such costs are incurred in accordance with State law, or regulation. The evidence considered by the State as acceptable in establishing or showing that the nonconforming use has not been abandoned or voluntarily discontinued shall be set forth in the State's policy and procedures.

(7) In the event a sign was omitted in the 1966 inventory, and the State supports a determination that the sign was in existence prior to October 1, 1966,

65. the costs are eligible for Federal participation.

b) Federal funds may not participate in:

1) Cost of title certificates, title insurance, title opinion or similar evidence or proof of title in connection with the acquisition of a landowner's right to erect and maintain a sign or signs when the amount of payment to the landowner for his interest is \$2,500 or less, unless required by State law. However, Federal funds may participate in the costs of securing some other evidence or proof of title such as surveys and investigations by State highway department personnel to the extent necessary to determine ownership, affidavit of ownership by the owner, bill of sale, etc. The State's procedure for determining evidence of ownership should be set forth in the State's policy and procedure submission.

2) Payments to a sign owner where the sign was erected without permission of the property owner unless the owner can establish his legal right to erect and maintain the sign. However, such signs may be removed by State personnel on a force account or by contract with Federal participation except where the sign owner reimburses the State for removal.

3) Acquisition costs paid for abandoned or illegal signs, potential signs, or signs which were built during a period of time which makes them ineligible for compensation under 23 U.S.C. 131, or for rights in sites on which signs have been abandoned or signs erected by a sign owner.

4) The acquisition cost of support poles or partially completed sign structures in nonconforming areas which do not have advertising or informative content thereon unless the owner can show to the State's satisfaction he has not abandoned the structure. When the State has determined a sign structure has not been abandoned, Federal funds will participate in the acquisition of the structure, provided the cost are incurred in accordance with State law.

1.306 Documentation for Federal participation.

The following information concerning each sign must be available in the

State's files to be eligible for Federal participation.

(a) *Payment to sign owner.* (1) A photograph of the sign in place. Exceptions may be made in cases where in one transaction the State has acquired a number of a company's nominal value signs similar in size, condition and shape. In such cases, only a sample of representative photographs need be provided to document the type and condition of the signs.

(2) Evidence showing the sign was nonconforming as of the date of taking.

(3) Value documentation and proof of obligation of funds.

(4) Satisfactory indication of ownership of the sign and compensable interest therein (e.g., lease or other agreement with the property owner, or an affidavit, certification, or other such evidence of ownership).

(5) Evidence that the sign falls within one of the three categories shown in § 750.302 of this regulation. The specific category should be identified.

(6) Evidence that the right, title, or interest pertaining to the sign has passed to the State, or that the sign has been removed.

(b) *Payment to the site owner.* (1) Evidence that an agreement has been reached between the State and owner.

(2) Value documentation and proof of obligation of funds.

(3) Satisfactory indication of ownership or compensable interest.

(c) In those cases where Federal funds participate in 100 percent of the cost of removal, the State file shall contain the records of the relocation made prior to January 4, 1975.

[39 FR 27436, July 29, 1974, as amended at 41 FR 31198, July 27, 1976]

**§ 750.307 FHWA project approval.**

Authorization to proceed with acquisitions on a sign removal project shall not be issued until such time as the State has submitted to FHWA the following:

(a) A general description of the project.

(b) The total number of signs to be acquired.

(c) The total estimated cost of the sign removal project, including a breakdown of incidental, acquisition and removal costs.

§ 750.308 Reports.

Periodic reports on site acquisitions and actual sign removals shall be submitted on FHWA Form 1424 and as prescribed.<sup>1</sup>

[39 FR 27436, July 29, 1974, as amended at 41 FR 9321, Mar. 4, 1976]

**Subpart E—Signs Exempt From Removal in Defined Areas**

**AUTHORITY:** 23 U.S.C. 131 and 315, 49 CFR 1.48, 23 CFR 1.32.

**SOURCE:** 41 FR 45827, Oct. 18, 1976, unless otherwise noted.

§ 750.501 Purpose.

This subpart sets forth the procedures pursuant to which a State may, if it desires, seek an exemption from the acquisition requirements of 23 U.S.C. 131 for signs giving directional information about goods and services in the interest of the traveling public in defined areas which would suffer substantial economic hardship if such signs were removed. This exemption may be granted pursuant to the provisions of 23 U.S.C. 131(o).

§ 750.502 Applicability.

The provisions of this subpart apply to signs adjacent to the Interstate and primary systems which are required to be controlled under 23 U.S.C. 131.

§ 750.503 Exemptions.

(a) The Federal Highway Administration (FHWA) may approve a State's request to exempt certain nonconforming signs, displays, and devices (hereinafter called signs) within a defined area from being acquired under the provisions of 23 U.S.C. 131 upon a showing that removal would work a substantial economic hardship throughout that area. A defined area is an area with clearly established geographical boundaries defined by the State which the State can evaluate as

an economic entity. Neither the State nor FHWA shall rely on individual claims of economic hardship. Exempted signs must:

(1) Have been lawfully erected prior to May 5, 1976, and must continue to be lawfully maintained.

(2) Continue to provide the directional information to goods and services offered at the same enterprise in the defined area in the interest of the traveling public that was provided May 5, 1976. Repair and maintenance of these signs shall conform with the State's approved maintenance standards as required by Subpart G of this part.

(b) To obtain the exemption permitted by 23 U.S.C. 131(o), the State shall establish:

(1) Its requirements for the directional content of signs to qualify for signs as directional signs to goods and services in the defined area.

(2) A method of economic analysis clearly showing that the removal of signs would work a substantial economic hardship throughout the defined area.

(c) In support of its request for exemption, the State shall submit to FHWA:

(1) Its requirements and method of § 750.503(b)).

(2) The limits of the defined area requested for exemption, a listing of signs to be exempted, their location and the name of the enterprise advertised on May 5, 1976.

(3) The application of the requirements and method to the defined areas, demonstrating that the signs provide directional information to goods and services of interest to the traveling public in the defined area and that removal would work a substantial economic hardship in the defined area(s).

(4) A statement that signs in the defined area(s) not meeting the exemption requirements will be removed in accordance with State law.

(5) A statement that the defined area will be reviewed and evaluated at least every three (3) years to determine if an exemption is still warranted.

<sup>1</sup> Forms are available at FHWA Division Offices located in each State.

(d) The FHWA, upon receipt of a State's request for exemption, shall refer to approval:

(1) Review the State's requirements and methods for compliance with the provisions of 23 U.S.C. 131 and this part.

(2) Review the State's request and proposed exempted area for compliance with State requirements and methods.

(3) Nothing herein shall prohibit the State from acquiring signs in the designated area at the request of the sign owner.

(4) Nothing herein shall prohibit the State from imposing or maintaining other requirements.

### Subpart F—[Reserved]

### Subpart G—Outdoor Advertising Control

**AUTHORITY:** 23 U.S.C. 131 and 315; 49 CFR

**SOURCE:** 40 FR 42844, Sept. 16, 1975, as otherwise noted.

#### § 750.701 Purpose.

This subpart prescribes the Federal Highway Administration (FHWA) policies and requirements relating to effective control of outdoor advertising under 23 U.S.C. 131. The purpose of these policies and requirements is to assure that there is effective State control of outdoor advertising in areas adjacent to Interstate and Federal-aid primary highways. Nothing in this subpart shall be construed to prevent a State from establishing more stringent outdoor advertising control requirements along Interstate Primary Systems than provided herein.

#### § 750.702 Applicability.

The provisions of this subpart are applicable to all areas adjacent to the Federal-aid Interstate and Primary Systems, including toll sections thereon, except that within urban areas, these provisions apply only within 660 feet of the nearest edge of the right-of-way. These provisions apply regardless of whether Federal funds participated in the costs of such highways.

The provisions of this subpart do not apply to the Federal-aid Secondary or Urban Highway System.

#### § 750.703 Definitions.

The terms as used in this subpart are defined as follows:

(a) Commercial and industrial zones are those districts established by the zoning authorities as being most appropriate for commerce, industry, or trade, regardless of how labeled. They are commonly categorized as commercial, industrial, business, manufacturing, highway service or highway business (when these latter are intended for highway-oriented business), retail, trade, warehouse, and similar classifications.

(b) Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(c) Federal-aid Primary Highway means any highway on the system designated pursuant to 23 U.S.C. 103(b).

(d) Interstate Highway means any highway on the system defined in and designated, pursuant to 23 U.S.C. 103(e).

(e) Illegal sign means one which was erected or maintained in violation of State law or local law or ordinance.

(f) Lease means an agreement, license, permit, or easement, oral or in writing, by which possession or use of land or interests therein is given for a specified purpose, and which is a valid contract under the laws of a State.

(g) Maintain means to allow to exist.

(h) Main-traveled way means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(i) Sign, display or device, hereinafter referred to as "sign," means an outdoor advertising sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any

place on the main-traveled way of the Interstate or Primary Systems, whether the same be permanent or portable installation.

(j) State law means a State constitutional provision or statute, or an ordinance, rule or regulation, enacted or adopted by a State.

(k) Unzoned area means an area where there is no zoning in effect. It does not include areas which have a rural zoning classification or land uses established by zoning variances or special exceptions.

(l) Unzoned commercial or industrial areas are unzoned areas actually used for commercial or industrial purposes as defined in the agreements made between the Secretary, U.S. Department of Transportation (Secretary), and each State pursuant to 23 U.S.C. 131(d).

(m) Urban area is as defined in 23 U.S.C. 101(a).

(n) Visible means capable of being seen, whether or not readable, without visual aid by a person of normal visual acuity.

§ 750.704 Statutory requirements.

(a) 23 U.S.C. 131 provides that signs adjacent to the Interstate and Federal-aid Primary Systems which are visible from the main-traveled way and within 660 feet of the nearest edge of the right-of-way, and those additional signs beyond 660 feet outside of urban areas which are visible from the main-traveled way and erected with the purpose of their message being read from such main-traveled way, shall be limited to the following:

(1) Directional and official signs and notice which shall conform to national standards promulgated by the Secretary in Subpart B, Part 750, Chapter I, 23 CFR, National Standards for Directional and Official Signs;

(2) Signs advertising the sale or lease of property upon which they are located;

(3) Signs advertising activities conducted on the property on which they are located;

(4) Signs within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which

are zoned industrial or commercial under the authority of State law;

(5) Signs within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are unzoned commercial or industrial areas, which areas are determined by agreement between the State and the Secretary; and

(6) Signs lawfully in existence on October 22, 1965, which are determined to be landmark signs.

(b) 23 U.S.C. 131(d) provides that signs in § 750.704(a) (4) and (5) must comply with size, lighting, and spacing requirements, to be determined by agreement between the State and the Secretary.

(c) 23 U.S.C. 131 does not permit signs to be located within zoned or unzoned commercial or industrial areas beyond 660 feet of the right-of-way adjacent to the Interstate or Federal-aid Primary System, outside of urban areas.

(d) 23 U.S.C. 131 provides that signs not permitted under § 750.704 of this regulation must be removed by the State.

§ 750.705 Effective control.

In order to provide effective control of outdoor advertising, the State must:

(a) Prohibit the erection of signs other than those which are permitted under § 750.704(a)(1) through (6);

(b) Assure that signs erected under § 750.704(a)(4) and (5) comply, at a minimum, with size, lighting, and spacing criteria contained in the agreement between the Secretary and the State;

(c) Assure that signs erected under § 750.704(a)(1) comply with the national standards contained in Subpart B, Part 750, Chapter I, 23 CFR;

(d) Remove illegal signs expeditiously;

(e) Remove nonconforming signs with just compensation within the time period set by 23 U.S.C. 131 (Subpart D, Part 750, Chapter I, 23 CFR) sets forth policies for the acquisition and compensation for such signs);

(f) Assure that signs erected under § 750.704(a)(6) comply with § 750.710

ndmark Signs, if landmark signs are owed;

(g) Establish criteria for determining which signs have been erected with the purpose of their message being read from the main-traveled way of an interstate or primary highway, except where State law makes such criteria necessary. Where a sign is erected with the purpose of its message being read from two or more highways, one more of which is a controlled highway, the more stringent of applicable control requirements will apply;

(h) Develop laws, regulations, and procedures to accomplish the requirements of this subpart;

(i) Establish enforcement procedures sufficient to discover illegally erected maintained signs shortly after such occurrence and cause their prompt removal; and

(j) Submit regulations and enforcement procedures to FHWA for approval.

FR 42844, Sept. 16, 1975; 40 FR 49777, 24, 1975]

**§ 750.706 Sign control in zoned and unzoned commercial and industrial areas.** The following requirements apply to signs located in zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of right-of-way adjacent to the Interstate and Federal-aid primary highways.

(1) The State by law or regulation shall, in conformity with its agreement with the Secretary, set criteria for size, lighting, and spacing of outdoor advertising signs located in commercial or industrial zoned or unzoned areas, as defined in the agreement, adjacent to Interstate and Federal-aid primary highways. If the agreement between the Secretary and the State includes a grandfather clause, the criteria for size, lighting, and spacing will apply only to those signs erected subsequent to the date specified in the agreement. The States may adopt more restrictive criteria than are presently contained in agreements with the Secretary.

(2) Agreement criteria which permit multiple sign structures to be considered as one sign for spacing purposes shall not limit multiple sign structures to

signs which are physically contiguous, or connected by the same structure or cross-bracing, or located not more than 15 feet apart at their nearest point in the case of back-to-back or "V" type signs.

(c) Where the agreement and State law permits control by local zoning authorities, these controls may govern in lieu of the size, lighting, and spacing controls set forth in the agreement, subject to the following:

(1) The local zoning authority's controls must include the regulation of size, of lighting and of spacing of outdoor advertising signs, in all commercial and industrial zones.

(2) The regulations established by local zoning authority may be either more restrictive or less restrictive than the criteria contained in the agreement, unless State law or regulations require equivalent or more restrictive local controls.

(3) If the zoning authority has been delegated, extraterritorial, jurisdiction under State law, and exercises control of outdoor advertising in commercial and industrial zones within this extraterritorial jurisdiction, control by the zoning authority may be accepted in lieu of agreement controls in such areas.

(4) The State shall notify the FHWA in writing of those zoning jurisdictions wherein local control applies. It will not be necessary to furnish a copy of the zoning ordinance. The State shall periodically assure itself that the size, lighting, and spacing control provisions of zoning ordinances accepted under this section are actually being enforced by the local authorities.

(5) Nothing contained herein shall relieve the State of the responsibility of limiting signs within controlled areas to commercial and industrial zones.

#### § 750.707 Nonconforming signs.

(a) *General.* The provisions of § 750.707 apply to nonconforming signs which must be removed under State laws and regulations implementing 23 U.S.C. 131. These provisions also apply to nonconforming signs located in commercial and industrial areas within 660 feet of the nearest



edge of the right-of-way which come under the so-called grandfather clause contained in State-Federal agreements. These provisions do not apply to conforming signs regardless of when or where they are erected.

(b) *Nonconforming signs.* A nonconforming sign is a sign which was lawfully erected but does not comply with the provisions of State law or State regulations passed at a later date or later fails to comply with State law or State regulations due to changed conditions. Changed conditions include, for example, signs lawfully in existence in commercial areas which at a later date become noncommercial, or signs lawfully erected on a secondary highway later classified as a primary highway.

(c) *Grandfather clause.* At the option of the State, the agreement may contain a grandfather clause under which criteria relative to size, lighting, and spacing of signs in zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way apply only to new signs to be erected after the date specified in the agreement. Any sign lawfully in existence in a commercial or industrial area on such date may remain even though it may not comply with the size, lighting, or spacing criteria. This clause only allows an individual sign at its particular location for the duration of its normal life subject to customary maintenance. Preexisting signs covered by a grandfather clause, which do not comply with the agreement criteria have the status of nonconforming signs.

(d) *Maintenance and continuance.* In order to maintain and continue a nonconforming sign, the following conditions apply:

(1) The sign must have been actually in existence at the time the applicable State law or regulations became effective as distinguished from a contemplated use such as a lease or agreement with the property owner. There are two exceptions to actual existence as follows:

(i) Where a permit or similar specific State governmental action was granted for the construction of a sign prior to the effective date of the State law or regulations and the sign owner

acted in good faith and expended substantial cost in reliance thereon. This exception shall not apply in instances where large numbers of permits were applied for and issued to a single sign owner obviously in anticipation of the passage of a State control law.

(ii) Where the State outdoor advertising control law or the Federal-State agreement provides that signs in commercial and industrial areas may be erected within six (6) months after the effective date of the law or agreement provided a lease dated prior to such effective date was filed with the State and recorded within thirty (30) days following such effective date.

(2) There must be existing property rights in the sign affected by the State law or regulations. For example, signs nailed to trees, abandoned signs, and the like are not protected.

(3) The sign may be sold, leased, or otherwise transferred without affecting its status, but its location may be changed. A nonconforming sign moved as a result of a right-of-taking or for any other reason may be relocated to a conforming area but cannot be reestablished at a new location as a nonconforming use.

(4) The sign must have been lawfully on the effective date of the State law or regulations, and must continue to be lawfully maintained.

(5) The sign must remain substantially the same as it was on the effective date of the State law or regulations. Reasonable repair and maintenance of the sign, including a change of advertising message, is not a change which would terminate nonconforming rights. Each State shall develop its own criteria to determine when customary maintenance ceases and a substantial change has occurred which would terminate nonconforming rights.

(6) The sign may continue as long as it is not destroyed, abandoned, or discontinued. If permitted by State law and reerected in kind, exception may be made for signs destroyed due to vandalism and other criminal or civil acts.

(1) Each state shall develop criteria to define destruction, abandonment, and discontinuance. These criteria may provide that a sign which is

gnated period of time has obsolete advertising matter or is without advertising matter or is in need of substantial repair may constitute abandonment or discontinuance. Similarly, a damaged in excess of a certain percentage of its replacement cost be considered destroyed.

(b) Where an existing nonconforming sign ceases to display advertising matter, a reasonable period of time to erase advertising content must be established by each State. Where new sign is not put on a structure in the established period, the use of the structure as a nonconforming outdoor advertising sign is terminated and shall constitute an abandonment or discontinuance. Where a State establishes a period of more than one (1) year as a reasonable period for change of message, it shall justify that period in customary enforcement practice in the State. This established period may be waived for an involuntary discontinuance such as the closing of a highway for repair in front of sign.

*Just compensation.* The States are required to pay just compensation for the removal of nonconforming law-existing signs in accordance with the terms of 23 U.S.C. 131 and the provisions of Subpart D, Part 750, Chapter 23 CFR. The conditions which establish a right to maintain a nonconforming sign and therefore the right to compensation must pertain at the time it is acquired or removed.

**750.708 Acceptance of state zoning.**

23 U.S.C. 131(d) provide that "may be erected and maintained within 660 feet of the nearest edge of right-of-way within areas . . . which are zoned industrial or commercial under authority of State law." Section 131(d) further provides, "The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act."

State and local zoning actions may be taken pursuant to the State's enabling statute or constitutional authority and in accordance with. Action which is not a part

of comprehensive zoning and is created primarily to permit outdoor advertising structures, is not recognized as zoning for outdoor advertising control purposes.

(c) Where a unit of government has not zoned in accordance with statutory authority or is not authorized to zone, the definition of an unzoned commercial or industrial area in the State-Federal agreement will apply within that political subdivision or area.

(d) A zone in which limited commercial or industrial activities are permitted as an incident to other primary land uses is not considered to be a commercial or industrial zone for outdoor advertising control purposes.

**§ 750.709 On-property or on-premise advertising.**

(a) A sign which consists solely of the name of the establishment or which identifies the establishment's principal or accessory products or services offered on the property is an on-property sign.

(b) When a sign consists principally of brand name or trade name advertising and the product or service advertised is only incidental to the principal activity, or if it brings rental income to the property owner, it shall be considered the business of outdoor advertising and not an on-property sign.

(c) A sale or lease sign which also advertises any product or service not conducted upon and unrelated to the business or selling or leasing the land on which the sign is located is not an on-property sign.

(d) Signs are exempt from control under 23 U.S.C. 131 if they solely advertise the sale or lease of property on which they are located or advertise activities conducted on the property on which they are located. These signs are subject to regulation (Subpart A, Part 750, Chapter I, 23 CFR) in those States which have executed a bonus agreement, 23 U.S.C. 131(j). State laws or regulations shall contain criteria for determining exemptions. These criteria may include:

(1) A property test for determining whether a sign is located on the same

property as the activity or property advertised; and

(2) A purpose test for determining whether a sign has as its sole purpose the identification of the activity located on the property or its products or services, or the sale or lease of the property on which the sign is located.

(3) The criteria must be sufficiently specific to curb attempts to improperly qualify outdoor advertising as "on-property" signs, such as signs on narrow strips of land contiguous to the advertised activity when the purpose is clearly to circumvent 23 U.S.C. 131.

**§ 750.710 Landmark signs.**

(a) 23 U.S.C. 131(c) permits the existence of signs lawfully in existence on October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance, the preservation of which is consistent with the purpose of 23 U.S.C. 131.

(b) States electing to permit landmark signs under 23 U.S.C. 131(c) shall submit a one-time list to the Federal Highway Administration for approval. The list should identify each sign as being in the original 1966 inventory. In the event a sign was omitted in the 1966 inventory, the State may submit other evidence to support a determination that the sign was in existence on October 22, 1965.

(c) Reasonable maintenance, repair, and restoration of a landmark sign is permitted. Substantial change in size, lighting, or message content will terminate its exempt status.

**§ 750.711 Structures which have never displayed advertising material.**

Structures, including poles, which have never displayed advertising or informative content are subject to control or removal when advertising content visible from the main-traveled way is added or affixed. When this is done, an "outdoor advertising sign" has then been erected which must comply with the State law in effect on that date.

**§ 750.712 Reclassification of signs.**

Any sign lawfully erected after the effective date of a State outdoor advertising control law which is reclassified from legal-conforming to nonconforming and subject to removal under revised State statutes or regulation and policy pursuant to this regulation is eligible for Federal participation in just compensation payments and other eligible costs.

**§ 750.713 Bonus provisions.**

23 U.S.C. 131(j) specifically provides that any State which had entered into a bonus agreement before June 1, 1965, will be entitled to remain eligible to receive bonus payments provided it continues to carry out its bonus agreement. Bonus States are not exempt from the other provisions of 23 U.S.C. 131. If a State elects to comply with both programs, it must extend controls to the Primary System, and continue to carry out its bonus agreement along the Interstate System except where 23 U.S.C. 131, as amended, imposes more stringent requirements.

**PART 751—JUNKYARD CONTROL AND ACQUISITION**

**Sec.**

751.1 Purpose.

751.3 Applicability.

751.5 Policy.

751.7 Definitions.

751.9 Effective control.

751.11 Nonconforming junkyards.

751.13 Control measures.

751.15 Just compensation.

751.17 Federal participation.

751.19 Documentation for Federal participation.

751.21 Relocation assistance.

751.23 Concurrent junkyard control and right-of-way projects.

751.25 Programming and authorization.

**AUTHORITY:** 23 U.S.C. 136 and 315, 42 U.S.C. 4321-4347 and 4601-4655, 23 CFR 1.32, 49 CFR 1.48, unless otherwise noted.

**SOURCE:** 40 FR 8551, Feb. 28, 1975, unless otherwise noted.

**§ 751.1 Purpose.**

Pursuant to 23 U.S.C. 136, this part prescribes Federal Highway Administration [FHWA] policies and procedures relating to the exercise of effective

control by the States of junkyards as adjacent to the Interstate and Federal-aid primary systems. Nothing in this part shall be construed to prevent a State from establishing more stringent junkyard control requirements than provided herein.

12260, Mar. 18, 1975]

### Applicability.

The provisions of this part are applicable to all areas within 1,000 feet of the nearest edge of the right-of-way visible from the main traveled way of all Federal-aid Primary and Secondary Systems regardless of whether Federal funds participated in the construction thereof, including sections of such highways. This part does not apply to the Urban Interstates.

### Policy.

carrying out the purposes of this part.

Emphasis should be placed on encouraging recycling of scrap and junk where practicable, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.);

Every effort should be made to prevent nonconforming junkyards from continuing as ongoing businesses; and

Nonconforming junkyards should be relocated only as a last resort.

### Definitions.

For purposes of this part, the following definitions shall apply:

**Junkyard.** (1) A Junkyard is an establishment or place of business which is maintained, operated or used for storing, keeping, buying, or selling scrap metal, or for the maintenance or operation of an automobile graveyard. This definition includes scrap metal processing, auto-wrecking yards, salvage yards, scrap yards, autorecycling yards, used auto parts yards and temporary storage of automobile bodies and parts awaiting disposal as a normal part of a business operation when the business will continually have like materials located on the premises. The definition includes garbage dumps and sanitary landfills. The definition does not include litter,

trash, and other debris scattered along or upon the highway, or temporary operations and outdoor storage of limited duration.

(2) An Automobile Graveyard is an establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Ten or more such vehicles will constitute an automobile graveyard.

(3) An Illegal Junkyard is one which was established or is maintained in violation of State law.

(4) A Nonconforming Junkyard is one which was lawfully established, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State regulations due to changed conditions. Illegally established junkyards are not nonconforming junkyards.

(b) *Junk.* Old or scrap metal, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof.

(c) *Main traveled way.* The traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(d) *Industrial zones.* Those districts established by zoning authorities as being most appropriate for industry or manufacturing. A zone which simply permits certain industrial activities as an incident to the primary land use designation is not considered to be an industrial zone. The provisions of Part 750, Subpart G of this chapter relative to Outdoor Advertising Control shall apply insofar as industrial zones are concerned.

(e) *Unzoned industrial areas.* An area where there is no zoning in effect and which is used primarily for industrial purposes as determined by the State and approved by the FHWA. An unzoned area cannot include areas which may have a rural zoning classification or land uses established by zoning variances or special exceptions.

[40 FR 8551, Feb. 28, 1975, as amended at 41 FR 9321, Mar. 4, 1976]

§ 751.9 Effective control.

(a) In order to provide effective control of junkyards located within 1,000 feet of Interstate and Federal-aid primary highways, the State must:

(1) Require such junkyards located outside of zoned and unzoned industrial areas to be screened or located so as not to be visible from the main traveled way, or be removed from sight.

(2) Require the screening or removal of nonconforming junkyards within a reasonable time, but no later than 5 years after the date the junkyard becomes nonconforming unless Federal funds are not available in adequate amounts to participate in the cost of such screening or removal as provided in 23 U.S.C. 136(j).

(3) Prohibit the establishment of new junkyards unless they comply with the requirements of paragraph (a)(1) of this section.

(4) Expeditiously require junkyards which are illegally established or maintained to conform to the requirements of paragraph (a)(1) of this section.

(b) Sanitary landfills as described herein need not be screened to satisfy requirements of Title 23, U.S.C., but landscaping should be required when the fill has been completed and operations have ceased, unless the landfill area is to be used for immediate development purposes. A sanitary landfill, for the purposes of this part, is a method of disposing of refuse on land without creating a nuisance or hazards to public health or safety by utilizing the principles of engineering to confine the refuse to the smallest practical area, to reduce it to the smallest practical volume, and to cover it with a layer of earth at the conclusion of each day's operation or at such more frequent intervals as may be necessary.

(c) The State shall have laws, rules, and procedures sufficient to provide effective control, to discover illegally established or maintained junkyards shortly after such occurrence, and to cause the compliance or removal of same promptly in accordance with State legal procedures.

§ 751.11 Nonconforming junkyards.

Subject to the provisions of § 751.9 above, the following requirements for the maintenance and continuance of nonconforming junkyard apply:

(a) The junkyard must have been actually in existence at the time the State law or regulations became effective as distinguished from a contemplated use, except where a permit of similar specific State government action was granted for the establishment of a junkyard prior to the effective date of the State law or regulations, and the junkyard owner acted in good faith and expended sums in reliance thereon.

(b) There must be existing property rights in the junkyard or junk affected by the State law or regulation. Abandoned junk and junkyard worthless junk, and the like are not similarly protected.

(c) If the location of a nonconforming junkyard is changed as a result of a right-of-way taking or for any other reason, it ceases to be a nonconforming junkyard, and shall be treated as a new junkyard at a new location.

(d) The nonconforming junkyard must have been lawful on the effective date of the State law or regulation and must continue to be lawfully maintained.

(e) The nonconforming junkyard may continue as long as it is not extended, enlarged, or changed in use. Once a junkyard has been made conforming, the placement of junk such that it may be seen above or beyond the screen, or otherwise becomes visible, shall be treated the same as the establishment of a new junkyard.

(f) The nonconforming junkyard may continue as long as it is not abandoned, destroyed, or voluntarily discontinued. Each State should develop criteria to define these terms.

§ 751.13 Control measures.

(a) Consistent with the goals of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), recycling of junk and scrap is to be encouraged to the greatest extent practicable in the implementation of the junkyard control program. Recycling should be considered in conjunction with other control

measures. To facilitate recycling, junk scrap should be moved to an automobile wrecker, or a scrap processor, put to some other useful purpose.

(b) Every effort shall be made to screen where the junkyard is to continue as an ongoing business. Screening may be accomplished by use of natural objects, landscaping plantings, fences, and other appropriate means, including relocating inventory on site to utilize an existing natural screen or a screenable portion of the site.

(c) Where screening is used, it must, on completion of the screening project, effectively screen the junkyard from the main traveled way of the highway on a year-round basis, and be compatible with the surroundings. Each State shall establish criteria governing the location, design, construction, maintenance, and materials used for fencing or screening.

(d) A junkyard should be relocated only when other control measures are not feasible. Junkyards should be relocated to a site not visible from the highway or to an industrial area, and should not be relocated to residential, commercial, or other areas where foreseeable environmental problems may develop.

(e) The State may develop and use other methods of operation to carry out the purposes of this directive, subject to prior FHWA approval.

#### 51.15 Just compensation.

(a) Just compensation shall be paid to the owner for the relocation, removal, and disposal of junkyards lawfully established under State law, which are required to be removed, relocated, or disposed of pursuant to 23 U.S.C. 136.

(b) No rights to compensation accrue until a taking or removal has occurred. The conditions which establish a right to maintain and continue a nonconforming junkyard as provided in 51.11 must pertain at the time of a taking or removal in order to establish a right to just compensation.

#### 51.17 Federal participation.

(a) Federal funds may participate in a percentage of the costs of control measures incurred in carrying out the provisions of this part including necessary studies for particular projects,

and the employment of fee landscape architects and other qualified consultants.

(b) Where State control standards are more stringent than Federal control requirements along Interstate and primary highways, the FHWA may approve Federal participation in the costs of applying the State standards on a statewide basis. Where State standards require control of junkyards in zoned or unzoned industrial areas, Federal funds may participate only if such action will make an effective contribution to the character of the area as a whole and the cost is reasonable, but such projects should be deferred until the work in the areas where control is required has progressed well toward completion.

(c) Generally, only costs associated with the acquisition of minimal real property interests, such as easements or temporary rights of entry, necessary to accomplish the purposes of this part are eligible for Federal participation. The State may request, on a case-by-case basis, participation in costs of other interests beyond the minimum necessary, including fee title.

(d) Federal funds may participate in costs to correct the inadequacies of screening in prior control projects where the inadequacy is due to higher screening standards established in this Part or due to changed conditions.

(e) Federal funds may participate in the costs of moving junk or scrap to a recycling place of business, or in the case of junk with little or no recycling potential, to a site for permanent disposal. In the latter case, reasonable land rehabilitation costs or fees connected with the use of such a disposal site are also eligible. In a case where the acquisition of a permanent disposal site by the State would be the most economical method of disposal, Federal funds may participate in the net cost (cost of acquisition less a credit after disposal) of a site obtained for this purpose.

(f) Federal funds may participate in control measure costs involved in any junkyard lawfully established or maintained under State law which is reclassified from conforming to noncon-

forming under revised State regulations and policy pursuant to this part.

(g) Federal funds may participate in the costs of acquisition of a dwelling in exceptional cases where such acquisition is found necessary and in the public interest, and where acquisition of the dwelling can be accomplished without resort to eminent domain.

(h) Federal funds shall not participate in:

(1) Costs associated with the control of illegal junkyards except for removal by State personnel on a force account basis or by contract, or in costs of controlling junkyards established after the effective date of the State's compliance law except where a conforming junkyard later becomes nonconforming due to changed conditions;

(2) Any costs associated with the acquisition of any dwelling or its related buildings if acquired through eminent domain in connection with the junkyard control program;

(3) Costs of acquisition of interests or rights as a measure for prohibition or control of the establishment of future junkyards;

(4) Costs of maintaining screening devices after they have been erected; or

(5) Costs of screening junk which has been or will be removed as a part of a junkyard control project.

#### § 751.19 Documentation for Federal participation.

The following information concerning each eligible junkyard must be available in the States' files to be eligible for Federal participation in the costs thereof:

(a) Satisfactory evidence of ownership of the junk or junkyard or both.

(b) Value or cost documentation (including separate interests if applicable) including proof of obligation or payment of funds.

(c) Evidence that the necessary property interests have passed to the State and that the junk has been screened, relocated, removed or disposed of in accordance with the provisions of this part.

(d) If a dwelling has been acquired by condemnation, evidence that the costs involved are not included in the State's claim for participation.

[40 FR 8551, Feb. 28, 1975; 40 FR 12260, Mar. 18, 1975]

#### § 751.21 Relocation assistance.

Relocation assistance benefits pursuant to Part 740, 23 CFR are available for:

(a) The actual reasonable moving expenses of the junk, actual direct loss of tangible personal property and actual reasonable expenses in searching for a replacement business or, if the eligibility requirements are met, payment in lieu of such expenses.

(b) Relocation assistance in locating a replacement business.

(c) Moving costs of personal property from a dwelling and relocation assistance in locating a replacement dwelling, provided the acquisition of the real property used for the business causes a person to vacate a dwelling.

(d) Replacement housing payment if the acquisition of the dwelling found by FHWA to be necessary to the federally assisted junkyard control project.

#### § 751.23 Concurrent junkyard control and right-of-way projects.

The State is encouraged to coordinate junkyard control and highway right-of-way projects. Expenses incurred in furtherance of concurrent projects shall be prorated between projects.

#### § 751.25 Programming and authorization.

(a) Junkyard control projects shall be programmed in accordance with the provisions of Part 630, Subpart A of this chapter. Such projects may include one or more junkyards.

(b) Authorization to proceed with a junkyard control project may be given when the State submits a written request to FHWA which includes the following:

(1) The zoning and validation of the legal status of each junkyard on the project;

(2) The control measures proposed for each junkyard including, where applicable, information relative to permanent disposal sites to be acquired by the State;

(3) The real property interest to be acquired in order to implement the control measures;

(4) Plans or graphic displays indicating the location of the junkyard relative to the highway, the 1,000 foot control lines, property ownership boundaries, the general location of the junk or scrap material, and any buildings, structures, or improvement involved; and

(5) Where screening is to be utilized, the type of screening, and adequately scaled plans and cross sections, or other adequate graphic displays which illustrate the relationship of the material to the screen, and the material to be screened at critical points of view.

FR 8551, Feb. 28, 1975, as amended at 41 FR 9321, Mar. 4, 1976]

## PART 752—LANDSCAPE AND ROADSIDE DEVELOPMENT

- 1 Purpose.
- 2 Policy.
- 3 Definitions.
- 4 Landscape development.
- 5 Safety rest areas.
- 6 Scenic overlooks.
- 7 Information centers and systems.
- 8 Privately operated information centers and systems.
- 9 Scenic lands.
- 10 Abandoned vehicles.
- 11 Federal participation.

**AUTHORITY:** 23 U.S.C. 131, 315, 319; 42 C. 4321 *et seq.*; 49 CFR 1.48(b), unless otherwise noted.

**SOURCE:** 43 FR 19390, May 5, 1978, unless otherwise noted.

### 1.1 Purpose.

The purpose of this part is to furnish guidelines and prescribe policies regarding landscaping and scenic enhancement programs, safety rest areas, and scenic overlooks under 23 U.S.C. 319; information centers and systems under 23 U.S.C. 131(i); and vending machines in safety rest areas under 23 U.S.C. 111.

FR 38610, Aug. 25, 1983]

### 1.2 Policy.

(a) Highway esthetics is a most important consideration in the Federal highway program. Highways must

not only blend with our natural social, and cultural environment, but also provide pleasure and satisfaction in their use.

(b) The FHWA will cooperate with State and local agencies and organizations to provide opportunities for the display of original works of art within the highway rights-of-way.

(c) The development of the roadside to include landscape development, safety rest areas, and the preservation of valuable adjacent scenic lands is a necessary component of highway development. Planning and development of the roadside should be concurrent with or closely follow that of the highway. Further, the development of travel information centers and systems is encouraged as an effective method of providing necessary information to the traveling public.

### § 752.3 Definitions.

(a) *Safety rest area.* A roadside facility safely removed from the traveled way with parking and such facilities for the motorist deemed necessary for his rest, relaxation, comfort and information needs. The term is synonymous with "rest and recreation areas."

(b) *Scenic overlook.* A roadside improvement for parking and other facilities to provide the motorist with a safe opportunity to stop and enjoy a view.

(c) *Information centers.* Facilities located at safety rest areas which provide information of interest to the traveling public.

(d) *Information systems.* Facilities located within the right-of-way which provide information of interest to the traveling public. An information system is not a sign, display or device otherwise permitted under 23 U.S.C. 131 or prohibited by any local, State or Federal law or regulation.

### § 752.4 Landscape development.

(a) Landscape development within the right-of-way of all federally funded highways or on adjoining scenic lands shall be in general conformity with accepted concepts and principles of highway landscaping and environmental design.



(b) Highway planting programs should have provisions for plant establishment periods of a duration sufficient for expected survival in the highway environment. Normal 1-year plant establishment periods may be extended to 3-year periods where survival is considered essential to their function, such as junkyard screening or urban landscaping projects.

(c) In urban areas new and major reconstructed highways and completed Interstate and expressway sections are to be landscaped as appropriate for the adjacent existing or planned environment.

(d) In rural areas new and major reconstructed highways should be landscaped as appropriate for the adjacent environment. Planning should include the opportunity for natural regeneration of native growth and the management of that growth.

#### § 752.5 Safety rest areas.

(a) Safety rest areas should provide facilities reasonably necessary for the comfort, convenience, relaxation, and information needs of the motorist. Caretakers' quarters may be provided in conjunction with a safety rest area at such locations where accommodations are deemed necessary. All facilities within the rest area are to provide full consideration and accommodation for the handicapped.

(b) The State may permit the placement of vending machines in existing or new safety rest areas located on the rights-of-way of the Interstate system for the purpose of dispensing such food, drink, or other articles as the State determines are appropriate and desirable, except that the dispensing by any means, of petroleum products or motor vehicle replacement parts shall not be allowed. Such vending machines shall be operated by the State.

(c) The State may operate the vending machines directly or may contract with a vendor for the installation, operation, and maintenance of the vending machines. In permitting the placement of vending machines the State shall give priority to vending machines which are operated through the State licensing agency designated pursuant to section 2(a)(5) of the Randolph-Sheppard Act, U.S.C. 107(a)(5).

(d) Access from the safety rest area to adjacent publicly owned conservation and recreation areas may be permitted if access to these areas is only available through the rest area and these areas or their usage does not adversely affect the facilities of the safety rest area.

(e) The scenic quality of the site, accessibility and adaptability, and the availability of utilities are the primary considerations in the selection of rest area sites. A statewide safety rest area system plan should be maintained. This plan should include development priorities to ensure safety rest areas will be constructed first at locations most needed by the motorist. Proposals for safety rest areas or similar facilities on Federal-aid highways in rural or urban areas shall be special case and must be fully justified before being authorized by the FHWA Regional Administrator.

(f) Facilities within newly constructed safety rest areas should meet the forecast needs of the design year. Expansion and modernization of existing rest areas that do not provide adequate service should be considered.

(g) No charge to the public may be made for goods and services at safety rest areas except for telephone and tickets dispensed by vending machines.

[43 FR 19390, May 5, 1978, as amended at 48 FR 38611, Aug. 25, 1983]

#### § 752.6 Scenic overlooks.

Scenic overlooks shall be located and designed as appropriate to the site and the scenic view with consideration for safety, access, and convenience of the motorist. Scenic overlooks may provide facilities equivalent to those provided in safety rest areas.

#### § 752.7 Information centers and systems.

(a) The State may establish at existing or new safety rest areas information centers for the purpose of providing specific information to the motorist as to services, as to places of interest within the State and such other information as the State may consider desirable.

(b) The State may construct and operate the facilities, may construct and lease the operation of information facilities.

ties, or may lease the construction or operation of information facilities.

(b) Where the information center or system includes an enclosed building, identification of the operator and advertising must be restricted to the interior of the building. Where a facility is in the nature of a bulletin board or partial enclosure, none of the advertising, including the trade name, logo, or symbol of the operator shall be visible from the main traveled way.

(c) Subject to FHWA approval, States may establish or permit information systems within the right-of-way of federally funded highways which provide information of specific interest to the traveling public which does not visually intrude upon the main traveled way of the highway in a manner violating 23 U.S.C. 131 and any applicable local, State, and Federal laws, rules, and regulations.

**§ 752.9 Privately operated information centers and systems.**

(a) Subject to the FHWA Regional Administrator's approval of the lease agreement, the State may permit privately operated information centers and systems which conform with the standards of this directive.

(b) There shall be no violation of right of access, and no adverse effect on traffic in the main traveled way.

(c) The agreement between the State and the private operator shall provide that:

(1) The State shall have title to the information center or system upon completion of construction or termination of the lease.

(2) Advertising must be limited to matters relating to and of interest to the traveling public.

(3) Equal access must be provided at reasonable rates to all advertisers concerned qualified by the State.

(4) Forty percent or more of all display areas and audible communications shall be devoted free of charge to providing information to the traveling public and public service announcements.

(5) No charge to the public may be made for goods or services except telephone and articles dispensed by vending machines.

(6) Nondiscrimination provisions must be included in accordance with the State assurance with regard to 42 U.S.C. 2000d—2000d-5 (Civil Rights Act of 1964). The private operator may not permit advertising from advertisers who do not provide their services without regard to race, color, or national origin.

(7) The center or system shall be adequately maintained and kept clean and sanitary.

(8) The State may promulgate reasonable rules and regulations on the conduct of the information center or system in the interests of the public.

(9) The State may terminate the lease or agreement for violation of its terms or for other cause.

[43 FR 19390, May 5, 1978, as amended at 48 FR 38611, Aug. 25, 1983]

**§ 752.9 Scenic lands.**

(a) Acquisition of interests in and improvement of strips of land or water areas adjacent to Federal-aid highways may be made as necessary for restoration, preservation, and enhancement of scenic beauty.

(b) Scenic strip interests may be acquired in urban or rural areas, combined in one or more projects, authorized separately whether or not there is or has been a Federal-aid project on the adjoining Federal-aid highway.

(c) Approval of acquisition and development of scenic strips on completed Interstate should be conditioned on a showing that the acquisition of scenic strips was considered under the Highway Beautification Program for that particular section of Interstate.

**§ 752.10 Abandoned vehicles.**

(a) Abandoned motor vehicles may be removed from the right-of-way and from private lands adjacent to Federal-aid highways for the restoration, preservation, or enhancement of scenic beauty as seen from the traveled way of the highway as a landscape or roadside development project.

(b) The State shall obtain permission or sufficient legal authority to go on private land to carry out this program. Where feasible, an agreement should be made with the owner that he will not in the future place junk, or

allow junk to be placed, on his land so as to create an eyesore to the traveling public. The permission or authority and the agreement may be informal.

(c) The collection of abandoned motor vehicles from within the right-of-way must be a development project and not a maintenance operation. Once a State completes a development project for the removal of abandoned motor vehicles from within the highway right-of-way, it is obligated to continue the removal of future abandoned motor vehicles from within the development project limits without further participation.

#### § 752.11 Federal participation.

(a) Federal-aid highway funds, but generally excluding Interstate construction funds, are available for landscape development; for the acquisition and development of safety rest areas, scenic overlooks, and scenic lands; for the development of information centers and systems; and for the removal of abandoned motor vehicles.

(b) Federal-aid participation may be made in plant establishment periods in or associated with landscaping projects and in the planting of flowering materials supplied by garden clubs and other organizations or individuals.

(c) Federal-aid funds may not be used for assemblage, printing, or distribution of information materials; for temporary or portable information facilities; or for installation, operation, or maintenance of vending machines.

(23 U.S.C. 109, 131, 149, 315, and 319; 49 CFR 1.48(b); Pub. L. 97-134; 95 Stat. 1699)

[49 FR 1896, Jan. 16, 1984]

### PART 770—AIR QUALITY CONFORMITY AND PRIORITY PROCEDURES FOR USE IN FEDERAL-AID HIGHWAY AND FEDERALLY-FUNDED TRANSIT PROGRAMS

Sec.

770.1 Purpose.

770.3 Definitions.

770.5 Policy.

770.7 Applicability.

770.9 Conformance.

770.11 Priority.

770.13 Construction.

AUTHORITY: 23 U.S.C. 109 (h) and (j), 315 and 42 U.S.C. 4332, 7401 and 7506; 49 CFR 1.48(b).

SOURCE: 46 FR 8429, Jan. 26, 1981, unless otherwise noted.

#### § 770.1 Purpose.

The purpose of this part is to set forth the procedures for implementing sections 176 (c) and (d) of the Clean Air Act of 1970, as amended (CAA) (42 U.S.C. 7401, et seq.), and the consistency requirement of 23 U.S.C. 109(j).

#### § 770.3 Definitions.

(a) "Metropolitan planning organization (MPO)" is that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as required by 23 U.S.C. 104(f)(3), and capable of meeting the requirements of section 3(e)(1), 5(1), and 8 (a) and (c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602(e)(1), 1604(1), and 1607 (a) and (c)). This organization is the forum for cooperative decisionmaking by principal elected officials of general purpose local government.

(b) "National ambient air quality standards" are those standards established pursuant to 42 U.S.C. 7409 (section 109 of the CAA).

(c) "Nonattainment area" is any portion of an air quality control region for which any pollutant exceeds the national ambient air quality standard for the pollutant as designated pursuant to 42 U.S.C. 7407 (section 107 of the CAA).

(d) "State implementation plan (SIP)" is the plan required by 42 U.S.C. 7410 (section 110 of the CAA) to attain and maintain a national ambient air quality standard. For the purpose of this part, an approved SIP is the implementation plan, or most recent revision of this plan, which has been approved or promulgated by the Environmental Protection Agency (EPA) under section 110 of the CAA.

(e) "Transportation control measure (TCM)" is any measure in a SIP directed toward reducing emissions of air pollutants from transportation sources.

**0.5 Policy.**

is the policy of the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) that transportation agencies responsible for the planning and implementation of transportation facilities and services pursuant to sections 23 and 49, United States Code, consult with the local, State, and Federal air pollution control agencies, as appropriate, and ensure that plans, programs, and projects conform with approved SIP's and that adequate consideration is given to preservation and enhancement of air quality.

**7 Applicability.**

The procedures in § 770.9 of this part are to be applied to activities in attainment areas or portions thereof, as designated under section 176(d) of the CAA, and in air quality maintenance areas where State and local officials have determined that TCM's are needed to attain and maintain the national ambient air quality standards for transportation-related pollutants. The procedures in § 770.13 of this part apply to all construction projects constructed with UMTA or FHWA funds. Conformance findings under § 770.9 of this part also include the consistency requirement of 40 C.F.R. 109(j).

**9 Conformance.**

**General.** Conformance between transportation plans, programs, and projects and the SIP is required by section 176(c) of the CAA (42 U.S.C. 1756(c)). The UMTA and FHWA have an affirmative responsibility to assure conformity of any activity they port, fund, or approve. Further, section 176(c) prohibits an MPO from giving its approval to any project, program, or plan that does not conform to the SIP. The conformity requirement applies in all nonattainment and maintenance areas requiring transportation control plans for transportation-related pollutants. In such areas, transportation plans and programs must be judged in conformance with the SIP if they do not adversely affect TCM's in the SIP, and they contribute to reasonable progress in im-

plementing the TCM's contained in the SIP.

(b) *Conformance of transportation plans and programs.* (1) Conformance of plans and programs will be determined and documented by FHWA Regional and Division Administrators and by UMTA Regional Administrators as part of the certification and transportation improvement program reviews (23 CFR Part 450 and 49 CFR Part 613). These determinations will be based upon an evaluation of the following actions:

(i) The MPO's determination that the transportation plan and transportation improvement program adopted by the MPO policy board are in conformance with the SIP;

(ii) The FHWA and UMTA finding that the urban transportation planning process effectively incorporates air quality objectives and procedures required by adopted DOT/EPA guidelines in the development of the plan and program;

(iii) The FHWA and UMTA finding that coordination exists between air quality and transportation agencies, including a finding that the MPO has met locally established procedures (developed pursuant to sections 121 and 174 of the CAA (42 U.S.C. 7421, 7504)) to integrate transportation and air quality planning prior to approval of the plan or program by the MPO policy board;

(iv) The advancement of air quality planning tasks included in the unified planning work program (23 CFR Part 450 and 49 CFR Part 613) in accordance with work programs contained in the SIP;

(v) The timely programming of TCM's (which can be funded by FHWA or UMTA and which are contained in the SIP) by including these measures in the State's proposed program of projects (23 U.S.C. 105) approved by the FHWA and the annual element of the transportation improvement program (TIP/AE) (23 CFR Part 450 and 49 CFR Part 613) approved by the UMTA; and

(vi) The timely implementation of TCM's contained in the SIP, consistent with the priority required for these measures by section 176(d) of the CAA (42 U.S.C. 7506(d)) and sub-

ject to the availability of Federal funds.

(2) The June 14, 1978, Memorandum of Understanding<sup>1</sup> between the EPA and the DOT provides the EPA an opportunity to jointly review and comment on conformity of transportation plans and programs. When it is determined through the evaluation of these actions that reasonable progress is not being made on transportation planning or implementation commitments in the SIP, representatives of the UMTA, FHWA and EPA will meet with affected State and local jurisdictions and agencies, and MPO's to discuss problem resolution before the UMTA and FHWA make a final conformance determination. These discussions should focus upon, as appropriate, accelerating implementation of TCM's in the SIP and developing and implementing acceptable substitutes for delayed projects.

(3) Once the evaluation of actions in paragraph (b)(1) of this section has been completed (including the joint UMTA/FHWA/EPA meeting with State and local representatives, where necessary) and the UMTA and FHWA have determined that an area's plan or program does not conform to the SIP, transportation program approvals will be limited in the area to preliminary engineering and environmental impact studies, advance right-of-way purchases involving hardship cases, and those actions that are exempt from sanctions under section 176(a) of the CAA (42 U.S.C. 7506(a)), as defined in the EPA-DOT Final Policy and Procedures Memorandum on Federal assistance limitations (45 FR 24692, April 10, 1980)<sup>1</sup> until the deficiencies are corrected and a conformance finding is made.

(c) *Conformance of transportation projects.* A project conforms to a SIP if:

(1) It is a TCM from the SIP (should the project be specifically included in the SIP, no separate conformance finding need be made); or

(2) It comes from a conforming transportation improvement program or

(3) It is a project, exempt from transportation improvement program requirements, which does not adversely affect the TCM in the approved SIP. Exempt projects are those primary system and Interstate system safety projects included in the statewide safety improvement program (instead of the TIP) and emergency relief, junkyard control, outdoor advertising, and pavement-marking demonstration projects.

(d) *Projects not subject to further conformity review.* After approval of final environmental impact statement (EIS) or after a formal finding or determination that a project will involve no significant environmental impact, project will not be subject to further conformity review unless:

(1) A supplemental EIS significant related to air quality considerations undertaken; or

(2) A SIP revision is requested, which case the procedures in paragraph (e) of this section would be followed; or

(3) Major steps toward implementation of the project (such as the start of construction or substantial acquisition and relocation activities) have not commenced within 3 years of the date of approval of the final EIS.

(e) *Project approvals during subsequent SIP revisions—*(1) *EPA activities.* (i) There may be situations that would cause the EPA to require the SIP to be revised. The revisions may add TCM's to an SIP which previously had none or increase the emission reduction responsibility of the transportation sector. The EPA will determine the need for SIP revisions based upon its review of the reasonable further progress schedule in the SIP and the degree to which the schedule is being met. Some of the situations which could affect the meeting of this schedule are:

(A) Incorrect assumptions on growth rates and travel demand;

(B) Overly optimistic expectations of stationary source controls, vehicle inspection and maintenance programs, or TCM's; and

<sup>1</sup> Available for inspection and copying from FHWA and UMTA as prescribed in 49 CFR Part 7.

<sup>1</sup> See footnote 1 to § 770.9(b)(2).

(C) Inability to implement some portion(s) of the SIP.

(ii) By publication in the **FEDERAL REGISTER**, the EPA will notify the FHWA, UMTA, and the public when a SIP revision has been requested. The EPA intends to require all of the current SIP's (where carbon monoxide and ozone are major concerns) to contain a contingency provision which would apply when monitoring of progress reporting indicates that reasonable further progress toward attainment of air quality standards is not being maintained, and the EPA determines the SIP must be revised. For areas over 200,000 population, the contingency provision in the SIP should include a locally developed list of projects which implementing agencies have agreed can be delayed during an interim period while the SIP is being revised.

(b) *FHWA and UMTA activities.* After notification by the EPA that a SIP revision has been requested, and within a 12-month period thereafter or until the SIP is formally revised, whichever is shorter, the UMTA and FHWA will not authorize construction of any project contained in a SIP contingency provision list unless it is a project exempt from sanctions under section 176(a) of the CAA.

#### 770.11 Priority

(a) Section 176(d) of the CAA requires Federal agencies with authority to support or fund transportation-related activities to give priority to implementing the TCM's in the SIP. In accordance with § 770.9 of this part, a conformity determination of the transportation program cannot be made unless the program contributes reasonable progress in implementing the TCM's in the SIP. In this respect, the conformance and priority requirements are clearly related, and priority for air quality-related projects should be assured through conformity procedures.

(b) The FHWA will meet this requirement through implementation of the Federal-Aid Programs Approval and Project Authorization regulation, 49 CFR Part 630, Subpart A, which provides for the FHWA's review and approval of programs and projects. A

review of progress will be made by the FHWA at the time of TIP/AE review and annual program of projects approval.

(c) The UMTA will meet this requirement through the TIP/AE review and approval process under 49 CFR Part 613. Air quality projects are to be given significant emphasis by MPO's in developing the TIP/AE and by the UMTA in its approval of the TIP/AE. A review of implementation progress will be made by the UMTA at the time of TIP/AE review and approval, and will be addressed specifically in the UMTA's TIP review memorandum.

(d) The FHWA and UMTA regional/division representatives will negotiate procedures with EPA regional offices for ensuring that the EPA receives copies of the progress reviews and approval documents listed in paragraphs (b) and (c) of this section. The June 14, 1978, Memorandum of Understanding provides the EPA Regional Administrator with an opportunity to review the TIP/AE at the time it is forwarded by a State or local agency for Federal agency action. If the EPA Regional Administrator determines that the TIP/AE does not contribute to reasonable progress in implementing the TCM's in the SIP, he/she will submit recommendations for remedial or alternative action to the FHWA and UMTA regional/division representatives. The FHWA and UMTA will explicitly consider the EPA's comments and will notify the EPA of the disposition of its comments before acting on the TIP/AE.

(e) Similarly, under the June 14, 1978, Memorandum of Understanding, the FHWA and UMTA regional/division representatives will be provided an opportunity to review the SIP at the time it is forwarded to the EPA for approval. In light of the priority requirement in section 176(d) of the CAA, FHWA and UMTA reviews of the SIP should consider the projected availability of Federal resources to meet transportation commitments in the SIP and also to meet other priorities or obligations.

(f) Where other priorities are a consideration, non-SIP transportation measures can be funded or implemented

ed to meet these obligations. However, SIP-related transportation measures must retain a high priority and funding decisions must promote timely implementation of SIP measures to the extent that funds are available.

§ 770.13 Construction.

(a) The transportation agency receiving funds from FHWA, UMTA, or both, shall take steps to assure that its current specifications, and any revisions thereof, and the use of specific equipment and/or materials associated with construction conform with the approved SIP. This shall be accomplished in coordination with the State's air pollution control agency.

(b) The transportation agency shall establish procedures to ensure that changes in the SIP are reviewed to determine if revisions to the construction specifications will be necessary.

(c) Revisions to the construction specifications resulting from the above requirements shall be made in consultation with the FHWA and UMTA, as appropriate.

**PART 771—ENVIRONMENTAL  
IMPACT AND RELATED PROCEDURES**

**Sec.**

771.101 Purpose.

771.103 Authority and related statutes and orders.

771.105 Policy.

771.107 Definitions.

771.109 Applicability and responsibilities.

771.111 Early coordination, public involvement, and project development.

771.113 Timing of administration actions.

771.115 Classes of actions.

771.117 Categorical exclusions.

771.119 Environmental assessments.

771.121 Findings of no significant impact.

771.123 Draft environmental impact statements.

771.125 Final environmental impact statements.

771.127 Record of decision.

771.129 Reevaluation.

771.131 Emergency action procedures.

771.133 Compliance with other requirements.

771.135 Section 4(f) of the Department of Transportation Act.

771.137 International actions.

**AUTHORITY:** 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 109(h), 138, 315; 49 U.S.C. 1653(f); 49 CFR 1.48(b), unless otherwise noted.

**SOURCE:** 45 FR 71977, Oct. 30, 1980, unless otherwise noted.

**§ 771.101 Purpose.**

This regulation prescribes the policies and procedures of the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) for implementing the National Environmental Policy Act of 1969 (NEPA) and the regulations of the Council on Environmental Quality (CEQ). This regulation sets forth all FHWA, UMTA, and Department of Transportation (DOT) requirements under NEPA for the processing of transportation projects, including the applicable operating procedures and implementing instructions contained in DOT Order 5610.1C dated Sept. 18, 1979. This regulation also sets forth procedures to comply with 23 U.S.C. section 109(h).

(23 U.S.C. 109(h), 128, 138, and 315; 49 CFR 1.48(b))

[45 FR 71977, Oct. 30, 1980, as amended at 47 FR 21783, May 20, 1982]

**§ 771.103 Authority and related statutes and orders.**

(a) **Authority.** (1) 42 U.S.C. 4321 *et seq.*, National Environmental Policy Act of 1969, as amended;

(2) 23 U.S.C. 138 and 49 U.S.C. 1653(f), section 4(f) of the Department of Transportation Act of 1966;

(3) 23 U.S.C. 109, Standards;

(4) 23 U.S.C. 315, Rules, Regulation and Recommendations;

(5) 40 CFR 1500, *et seq.*, CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act;

(6) 49 CFR 1.51, DOT Delegations of Authority to UMTA;

(7) 49 CFR 1.48(b), DOT Delegation of Authority to FHWA;

(8) DOT Order 5610.1C, Procedure for Considering Environmental Impacts; dated September 18, 1979.

(b) **Related statutes and orders.** The following is a list of major statutes

<sup>1</sup> The FHWA prepared a notice entitled "Summary of Selected Environmental Legislation" which provides details on pertinent environmental requirements. Copies are

Continued

and orders relating to the preparation of environmental documents:

(1) 16 U.S.C. 461, *et seq.*, Archeological and Historic Preservation Act; and U.S.C. 305;

(2) 16 U.S.C. 470f, section 106 of the National Historic Preservation Act of 1966;

(3) 16 U.S.C. 662, Section 2 of the Fish and Wildlife Coordination Act;

(4) 16 U.S.C. 1452, 1456, Sections 303 and 307 of the Coastal Zone Management Act of 1972;

(5) 16 U.S.C. 1536, Section 7 of the Endangered Species Act of 1973;

(6) 33 U.S.C. 1251, *et seq.*, Clean Water Act of 1977;

(7) 42 U.S.C. 300(f) *et seq.*, Safe Drinking Water Act;

(8) 42 U.S.C. 4371 *et seq.*, Environmental Quality Improvement Act of 1970;

(9) 42 U.S.C. 4601, *et seq.*, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(10) 42 U.S.C. 4901 *et seq.*, Noise Control Act of 1972;

(11) 42 U.S.C. 7401 *et seq.*, Clean Air Act;

(12) 42 U.S.C. 200d-d4, Title VI of the Civil Rights Act of 1964;

(13) Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991, dated May 24, 1977;

(14) Executive Order 11593, Protection and Enhancement of the Cultural Environment dated May 13, 1971, implemented by DOT Order 5650.1, dated Nov. 20, 1972;

(15) Executive Order 11988, Floodplain Management, dated May 24, 1977, implemented by DOT Order 5602.2, dated April 23, 1979;

(16) Executive Order 11990, Protection of Wetlands, dated May 24, 1977, implemented by DOT Order 5660.1A, dated August 24, 1978;

(17) Section 3(d), 5(h) and 5(i) of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1601, *et seq.*);

(18) Section 14 of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1601);

as prescribed in 49 CFR Part 7, Subpart D and G, from UMTA and FHWA Headquarters and field offices.

(19) UMTA Circular 5620.1, Guidelines for Preparing Environmental Assessments.

#### § 771.105 Policy.

It is the policy of the Administration that:

(a) To the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated into a single process, and compliance with all applicable environmental requirements be reflected in the appropriate environmental document required by this regulation;

(b) Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation and of national, State, and local environmental goals including protection and enhancement of the environment, energy conservation and urban revitalization;

(c) Public involvement and a systematic interdisciplinary approach be essential parts of the development process for proposed actions;

(d) Measures necessary to mitigate adverse impacts be incorporated into the proposed action. Measures necessary to mitigate adverse impacts are eligible for Federal funding when it is determined that:

(1) The impacts for which the mitigation is proposed actually result from the Administration action;

(2) The proposed mitigation represents a reasonable public expenditure when considered in light of the severity of impacts of the action and the social, economic, energy, and environmental benefits of the proposed mitigation measures; and

(3) The proposed measures would assist in complying with a statute, Executive Order, or Administration regulation or policy.

(e) Costs incurred by the applicant which are directly related to the preparation of environmental documents requested by the Administration will be eligible for Federal assistance in accordance with Administration procedures.

(f) No person, because of handicap, age, race, color, sex, or national origin,



be excluded from participating in, or denied benefits of, or be subject to discrimination under any Administration program or procedural activity required by or developed pursuant to this regulation.

**§ 771.107 Definitions.**

The definitions contained in the CEQ regulation and in titles 23 and 49 of the United States Code are applicable to this regulation. In addition, the following definitions apply to this regulation:

(a) Environmental studies—the investigations of potential environmental impacts made to determine the appropriate environmental process to be followed and subsequent investigations that assist in the preparation of the appropriate environmental document.

(b) Action—the approval of construction of highway and transit projects with funds administered by FHWA under title 23 of the United States Code and by UMTA under title 49 of the United States Code and related statutes. It also includes approval of activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of Federal funds.

(c) Administration—the FHWA or UMTA, whichever is the designated lead agency for the proposed action.

**§ 771.109 Applicability and responsibilities.**

(a)(1) The provisions of this regulation and the CEQ regulation apply to proposals for Administration action over which the Administration exercises sufficient control and responsibility to alter the development or action being proposed. Actions taken by the applicant which do not require Federal approvals, such as preparation of a regional transportation plan, are not Administration actions.

(2) The provisions of this regulation do not apply to, affect, or alter decisions, approvals, authorizations, or other actions made by the Administration prior to the effective date of this regulation.

(3) Except as provided in paragraph (a)(4) of this section, draft environmental impact statements (DEIS's)

final environmental impact statements (FEIS's), environmental assessments (EA's), findings of no significant impact (FONSI) and categorical exclusions (CE's) accepted or prepared by the Administration after the effective date of this regulation will be developed in accordance with this regulation.

(4) FEIS's accepted by the Administration prior to July 30, 1981, whose drafts were filed with the Environmental Protection Agency (EPA) prior to July 30, 1979 (for FHWA, November 30, 1979), may be developed in accordance with the regulations in effect at the time the draft document was filed.

(5) All FEIS's accepted by the Administration after July 30, 1981, whose drafts were filed with EPA prior to July 30, 1979 (for FHWA November 30, 1979), will be developed in accordance with § 771.125 except that the requirements of § 771.127 (Record of Decision) are not applicable.

(b) It shall be the responsibility of the applicant, in cooperation with the Administration, to implement those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation. The FHWA will assure that this is accomplished through review and approvals of designs, plans, specifications and estimates (P.S. and E. and construction inspections. The UMTA will assure implementation of committed mitigation measures through incorporation by reference in the grant agreement.

(c) The Administration in cooperation with the applicant has the responsibility to manage the preparation of the appropriate environmental document. The role of the applicant is determined by the Administration in accordance with the CEQ regulation as described below. If the applicant qualifies for more than one role, the Administration will determine which role the applicant will assume. Regardless of the role the applicant is permitted to assume, the Administration is responsible for the decisions made on the scope and content of the appropriate environmental document.

(1) *Statewide agency.* If the applicant is a public agency that has statewide jurisdiction (for example, a State

highway agency or a State department (transportation) or is a local unit of government acting through a State agency and meets the requirements of section 102(2)(D) of NEPA, the applicant may prepare the EIS and other environmental documents with the Administration furnishing guidance, participating in the preparation, and independently evaluating the documents in accordance with section 102(2)(D) of NEPA. All applicants in a group qualify as joint lead agencies with the Administration (all FHWA applicants qualify under this paragraph).

**Joint lead agency.** If the applicant is a public agency and is subject to State or local requirements comparable to NEPA, then the Administration and the applicant may prepare EIS and other environmental documents as joint lead agencies. The applicant will initially develop substantial portions of the environmental document although the Administration will be responsible for its scope and content.

**Cooperating agency.** If the applicant is a local public agency that has local expertise in the proposed action, the applicant may be a cooperating agency. A local applicant for sections 3 and 5 assistance under the Mass Transportation Act (UMTA) of 1964, as amended, is presumed to be a cooperating agency. During the environmental process, the Administration will discuss the scope and content of the appropriate environmental document with the applicant before decisions are made on the scope and content of the environmental analysis. The applicant may be directed to carry out these decisions.

**Other.** In all other cases the role of the applicant is limited to providing environmental studies and comment on environmental documents. All State institutions or firms are limited to this role.

**States operating under an approved certification** in accordance with 23 CFR Part 640 may substitute projects which are the subject of approved certification, State laws, regulations, directives, and standards which meet the objectives in this regulation (see § 771.113 (a)(2) and (b)).

(23 U.S.C. 109(h), 128, 138, and 315; 49 CFR 1.48(b))

[45 FR 71977, Oct. 30, 1980, as amended at 47 FR 21783, May 20, 1982]

#### § 771.111 Early coordination, public involvement, and project development.

(a) Early coordination involves the input from and exchanges of information with the public and public agencies from the inception of proposals for actions to the preparation of the appropriate environmental document. Applicants intending to apply for funds should notify the Administration at the time that a particular project concept is identified. When requested, the Administration will advise the applicant, insofar as possible, of the probable class of action and related environmental laws and requirements which would apply to the proposed action and of the need for specific studies and findings which would normally be developed concurrently with the environmental document.

(b) Any requested identification of the probable class of action will be made at the Transportation Improvement Program (TIP) approval stage, or at an earlier stage, if sufficient information is available to identify the probable impacts of the proposed action. (23 CFR Part 450, Subpart C)

(c) When the FHWA and UMTA are involved in the development of multimodal projects, the agencies will be joint lead agencies or one agency will be designated as the lead agency. When the FHWA or UMTA acts as a joint lead agency with another Federal agency, mutually acceptable procedures for the preparation and processing of environmental documents will be established on a case-by-case basis consistent with the purpose and policy of this regulation.

(d) During the early coordination process, the Administration in cooperation with the applicant may request other appropriate agencies to become cooperating agencies. Agencies with jurisdiction by law must be requested to become cooperating agencies.

(e) Early notification to and solicitation of views from other States and Federal land management entities significantly affected by the proposed

action shall be accomplished by the applicant in cooperation with the Administration. The notification and solicitation of views from other States should be mailed to the A-95 clearing-houses for those States unless the Governor has designated an agency other than the clearinghouse for this purpose. The Administration will prepare a written evaluation of any issues identified which indicate a significant disagreement with respect to the impact of the proposed action or any of the alternatives. This evaluation will be furnished to the applicant for incorporation into the EA or DEIS.

(f) In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are evaluated, each EIS or FONSI prepared for a proposed action shall evaluate a project which:

(1) Connects logical termini and is of sufficient length to address environmental matters on a broad scope;

(2) Has independent utility or independent significance, i.e., is useable and a reasonable expenditure even if no additional transportation improvements in the area are accomplished; and

(3) Will not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(g) The tiering of EIS's, as discussed in the CEQ Regulation (40 CFR 1502.20), is encouraged when it will improve or simplify the environmental processing of complex actions. The first tier EIS would focus on broad issues such as mode choice, general location and areawide air quality and land-use implications of the alternate transportation improvements. A second tier, site specific EIS would focus on more detailed project impacts and detailed mitigation measures.

(h) In lieu of the procedures required by 23 CFR Part 790, a State may, to comply with 23 U.S.C. section 128, adopt public involvement/public hearing and other procedures, subject to FHWA acceptance, which include provisions for one or more public hearings to be held at a convenient time and place, or the opportunity for hearing(s) to be afforded, on any Federal-aid project which requires the ac-

quisition of significant amounts right-of-way; or substantially changing the layout or functions of connecting roadways or of the facility being improved; or has a significant adverse impact on abutting real property, otherwise has a significant social, economic, environmental or other effect. The public involvement/public hearing procedures accepted hereunder must assure reasonable notice to the public of the hearing opportunity as well as the availability of explanatory information. These procedures must be fully coordinated with the NEPA process. Approvals made by FHWA prior to May 11, 1982, of procedures for use in lieu of Part 790 remain valid. Changes in such procedures require FHWA acceptance.

(i) Interested citizens may obtain information on the UMTA environmental process and the status of EIS issued by UMTA from: Director, Office of Program Analysis, Urban Mass Transportation Administration, Washington, D.C. 20590. Questions on the status of DEIS's combined with alternatives analyses as required by UMTA policy on major urban mass transportation investments should be directed to: Director, Office of Planning Assistance, Urban Mass Transportation Administration, Washington, D.C. 20590. Information on the FHWA environmental process may be obtained from: Director, Office of Environmental Policy, Federal Highway Administration, Washington, D.C. 20590.

[45 FR 71977, Oct 30, 1980, as amended 47 FR 21783, May 20, 1982]

#### § 771.113 Timing of administration actions.

(a) The Administration in cooperation with the applicant will complete all work, including any necessary design work, required to make the engineering and environmental decisions necessary to complete a FONSI or an EIS and to comply with other related laws and regulations which, to the maximum extent possible, must be accomplished coincident with the NEPA process. However, other design activities, property acquisition (other than hardship or protective buying pursuant to 23 CFR 712.204(d)),

struction shall not proceed until following actions have been completed:

(i) The action has been classified as a categorical exclusion, or (ii) a NSI has been adopted or (iii) a NS has been approved and available for the prescribed period of time, and record of decision, when required, has been prepared and signed; and

(b) For FHWA actions, the FHWA Administrator has received and accepted the public hearing transcripts, reports and certifications required by 23 U.S.C. 128.

(c) For FHWA actions, the completion of the requirements set forth in paragraph (a) of this section is considered acceptance of the general location of the proposed action unless otherwise specified by the appropriate FHWA official. For those categorical exclusions which require location approval, this approval will be made by FHWA after consultation with the applicant.

Letters of Intent issued under the authority of section 3(a)(4) of the Act are used by UMTA to indicate an intention to obligate future funds for multiyear capital transit projects. The scope of the environmental document must address the project covered by the proposed Letter of Intent. Letters of Intent will be issued by UMTA until the A process is completed.

#### 115 Classes of actions.

There are three classes of actions which prescribe the level of documentation required in the NEPA process.

*Class I (EIS's).* Actions that may significantly affect the environment require an EIS. (40 CFR 1508.27) Examples of these actions are:

Any new controlled access free-

Any highway project of 4 or more lanes on a new location.

New construction or extension of guideway systems (e.g., rapid light rail, commuter rail, automated guideway transit, and exclusive way). These projects would be expected to cause major shifts in travel patterns and land use.

Major transportation related development whose construction involves

a large amount of demolition, displacement of a large number of individuals or businesses, or substantial disruption to local traffic patterns. This classification will take account of the condition of the buildings and availability of comparable replacement facilities for displaced residences or businesses.

(b) *Class II (Categorical exclusions).* Actions that do not individually or cumulatively have a significant effect on the environment do not require an environmental impact statement or environmental assessment. The following actions are categorical exclusions:

(1) Planning and technical studies which do not fund the construction of facilities or acquisition of capital equipment.

(2) Grants for training and research programs which do not involve construction.

(3) Approval of a unified planning work program and certification of a State or local planning process. 23 CFR Part 450.

(4) Approval of Transportation Improvement Programs under 23 CFR Part 450, Subpart C and statewide programs under 23 CFR Part 630, Subpart A.

(5) Approval of project concepts under 23 CFR Part 476.

(6) Engineering when undertaken to define the elements of a proposal or alternatives sufficiently so that environmental effects can be assessed.

(7) Federal-aid highway system revisions under 23 U.S.C. 103, which establishes classes of highways on the Federal-aid highway system.

(8) Approval of utility installations along or across a transportation facility.

(9) Reconstruction or modification of an existing bridge structure on essentially the same alignment or location (e.g., widening less than a single travel lane, adding shoulders or safety lanes, walkways, bikeways, or pipelines) except bridges on or eligible for inclusion on the National Register or bridges providing access to barrier islands. Reconstruction or modification of an existing one lane bridge structure, presently serviced by a two lane road and used for two lane traffic, to a two lane bridge on essentially the same alignment or location, except

bridges on or eligible for inclusion on the National Register or bridges providing access to barrier islands.

(10) Construction of bicycle and pedestrian lanes, paths, and facilities.

(11) Activity included in the State's "highway safety plan" under 23 U.S.C. 402.

(12) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.

(13) Modernization of an existing highway by resurfacing, restoration, rehabilitation, widening less than a single lane width, adding shoulders, adding auxiliary lanes for localized purposes (e.g., weaving, turning, climbing), and correcting substandard curves and intersections. This classification is not applicable when the proposed project requires acquisition of more than minor amounts of right-of-way or substantial changes in access control.

(14) Highway safety or traffic operations improvement projects including the correction or improvement of high hazard locations; elimination of roadside obstacles; highway signing; pavement markings; traffic control devices; railroad warning devices; and lighting. This classification is not applicable when the proposed action requires acquisition of more than minor amounts of right-of-way or substantial changes in access control.

(15) Alterations to existing buildings to provide for noise reduction and the installation of noise barriers.

(16) Ridesharing activities and transportation corridor fringe parking facilities.

(17) Landscaping.

(18) Program administration and technical assistance activities by the applicant to administer section 18 funds. (Rural public transportation program)

(19) Project administration and operating assistance to transit authorities to continue existing service or increase service to meet demand.

(20) Purchase of vehicles of the same type (same mode) either as replacements or to increase the size of the fleet where such increase can be accommodated by existing facilities or by new facilities which themselves are within a categorical exclusion.

(21) Track and rail bed maintenance and improvements when carried out within the existing right-of-way.

(22) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where no additional land is required and there is no substantial increase in the number of users.

(23) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant physical impacts off the site.

(24) Installation of signs, small passenger and bus shelters, and traffic signs where no substantial land acquisition or traffic disruption will occur.

(25) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(26) Acquisition of land in which the property will not be modified, the use will not be changed, and displacements will not occur. For projects other than UMTA advance land loan, this categorical exclusion is limited to the acquisition of minor amounts of land. This is undertaken for the purpose of maintaining the current use and preserving alternatives to be considered in the environmental process. Advance land acquisition shall limit the evaluation of alternatives, including shifts in alignment for a construction project, which may be required in the NEPA process.

(27) Promulgation of rules, regulations, and directives for which a regulatory analysis is not required by section 3 of Executive Order 12044.

(28) Research activities as defined in 23 U.S.C. 307.

(29) Emergency repairs under 23 U.S.C. 125 which do not substantially change the design and are commenced during or immediately after the occurrence of a natural disaster or catastrophic failure.

(c) *Class III (EA's)*. Actions in which the significance of the impact on the environment is not clearly established. All actions that are not Class I or II

**Class III.** All actions in this class require the preparation of an EA to determine the appropriate environmental document required, unless it is initially determined that an EA should be prepared. In the case of rules, regulations, or directives for which a regulatory analysis is required under section 3 of Executive Order 12044, an EA may be contained in the regulatory analysis and need not be a separate document.

#### § 771.117 Categorical exclusions.

(a) Categorical exclusions are categories of actions which do not involve significant environmental impacts or substantial planning, time or resources. These actions will not induce significant foreseeable alterations in land use, planned growth, development patterns, or natural or cultural resources. The categorical exclusions listed in § 771.115(b).

(b) Any recommendation by an applicant that a proposed action is a categorical exclusion as identified in § 771.115(b) must be approved by the Administration. The Administration requires sufficient information to determine if the proposal meets the criteria for a categorical exclusion. Proposals meeting the criteria for categorical exclusions do not require additional environmental documentation.

(c) The Administration may determine that any action proposed as a categorical exclusion may, because of extraordinary circumstances, require appropriate environmental studies to establish the need for an EIS. Extraordinary circumstances includes situations that are likely to involve:

(1) Significant impacts on the environment;

(2) Substantial controversy on environmental grounds;

(3) Significant impacts on properties protected by section 4(f) of the DOT and section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law or administrative determination relating to the environment.

(d) An applicant may propose that additional categories of actions be added to the list of categorical exclusions in § 771.115(b).

(e) Such proposals shall be submitted to the Administration headquarters office for approval and will be processed in accordance with 40 CFR 1507.3.

[45 FR 71977, Oct. 30, 1980; 45 FR 85449, Dec. 29, 1980]

#### § 771.119 Environmental assessments.

(a) The EA shall be prepared by the applicant in consultation with the Administration for each action that is not a categorical exclusion and does not clearly require the preparation of an EIS or where, in the opinion of the Administration, the EA would assist in determining the need for an EIS.

(b) For actions that require an EA, the applicant in consultation with the Administration will, at the earliest appropriate time, begin consultation with interested agencies and others to achieve the following objectives: Define the scope of the project; identify alternatives to the proposed action; determine which aspects of the proposed action have potential for environmental impact; identify measures and alternatives which might mitigate adverse environmental impacts; and identify other environmental review and consultation requirements which should be prepared concurrently with the EA. The applicant will accomplish this through an early coordination process (i.e., procedures under § 771.111), or through a scoping process. A summary of the contacts made and comments received will be included in the EA.

(c) The EA is subject to Administration approval before it is made available to the public as an Administration document. If the EA is made available prior to Administration approval, it must be labeled as the applicant's document.

(d) The EA need not be circulated for comment but the document must be made available for public inspection at the applicant's office and at the appropriate Administration field offices in accordance with paragraphs (e) and (f) of this section. Notice of the availability of the EA shall be sent by the applicant to the State and areawide clearinghouses.

(e) When a public hearing is required, the environmental assessment (EA) will be prepared in advance of the notice of public hearing. The notice of the public hearing in local newspapers will announce the availability of the applicant's EA and where it may be obtained or reviewed. The FHWA public hearing requirements are as described in 23 CFR Part 790 unless other procedures have been adopted and accepted in accord with 23 CFR 771.111(h). The Urban Mass Transportation Administration (UMTA) has a public hearing requirement in all applications for capital and operating assistance.

(f) When a public hearing is not required, the applicant shall place a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of development of the action advising the public of the availability of the EA and where information concerning the action may be obtained. The notice shall invite comments from all interested parties including those who believe that the action involves a significant impact on the human environment or that the analysis of social, economic, and environmental impacts presented in the EA is inadequate to assess their significance. Comments shall be submitted in writing to the applicant or the Administration within 30 days of the publication of the notice unless the Administration determines a shorter period is warranted.

(g) If no significant impacts are identified, the applicant will furnish the Administration a copy of the EA, revised as appropriate, the public hearing transcript when a public hearing was held, and a summary of any comments received and responses thereto and recommend a FONSI.

(h) If, at any point in the EA process, the Administration determines that the proposed action may have a significant impact on the environment, the preparation of an EIS will be required. Actions in § 771.115(a) will normally require preparation of an EIS. If an action in these categories is processed with an EA, copies of the EA will be made available for public review (including State and areawide clearinghouses) for 30 days before the Admin-

istration makes its final decision. (See 40 CFR 1501.4(e)(2).) This public availability will be announced by a notice similar to a public hearing notice at least 30 days before any decision on the EA is made. The EA will be provided to the Administration Washington Headquarters at the same time it is made available to the public.

(23 U.S.C. 109(h), 123, 138, and 315; 49 CFR 1.48(b)).

[45 FR 71977, Oct. 30, 1980, as amended; 47 FR 21783, May 20, 1982]

#### § 771.121 Findings of no significant impact.

(a) The Administration, after review of the EA and any public hearing comments or other comments received regarding the EA, and if in agreement with the applicant's recommendation will make a separate written finding of no significant impact (FONSI) incorporating the EA and any other appropriate environmental documents.

(b) After a FONSI has been made by the Administration, a notice of the availability of the FONSI shall be sent by the applicant to State and areawide clearinghouses and the document will be available from the applicant or the Administration upon request by the public.

(c) If another Federal agency has issued a FONSI on an action which includes an element proposed for Administration funding, the Administration will evaluate the FONSI, and if it is determined that the proposed Administration-funded action and its environmental impacts are adequately identified and assessed, the Administration will issue its own FONSI incorporating the other agency's FONSI.

#### § 771.123 Draft environmental impact statements.

(a) A DEIS will be prepared when the Administration determines initially that the action may cause significant impacts on the environment when the environmental studies require early coordination for the action indicate significant impacts, or when the review of the EA in light of comments received indicates the impacts expected to result from the action may be significant. When the decision

made by the Administration that the DEIS will be prepared, the Administration will issue a notice of intent for publication in the **FEDERAL REGISTER**. Applicants are encouraged to announce the intent to prepare an EIS by appropriate means at the local level.

After publication of the notice of intent, the Administration in cooperation with the applicant will begin a scoping process. The scoping process will be used to identify the range of alternatives and impacts and the significant issues to be addressed in the DEIS and to achieve the other objectives of 40 CFR 1501.7. For FHWA, scoping is normally achieved through public and agency involvement procedures required by § 771.111 and through other early coordination activities. For UMTA, a scoping meeting normally is required. If a scoping meeting is to be held, it will be announced in the Administration's notice of intent and by appropriate means at the local level.

The DEIS shall be prepared by the Administration in cooperation with the applicant. The DEIS shall discuss all reasonable alternatives to the proposed action and summarize studies, reviews, consultations, and information required by environmental laws and Executive Orders to the extent appropriate at this stage in the environmental process. The DEIS for projects in an urbanized area shall require involvement of the metropolitan planning organization (MPO) and alternatives to be considered in the DEIS shall be developed in consultation with the MPO.

For major urban transportation projects, the DEIS documents the results of an analysis of transportation alternatives.

An applicant which is a "joint" or "cooperating" agency may employ a consultant to assist in the preparation of an EIS subject to the concurrence of the Administration to ensure compliance with 40 CFR 1501.7(c). (See § 771.109(c) for definition of these terms.) A "statewide" agency may select a consultant in accordance with applicable procedures. The Administration will select any

such consultant for "other" applicants.

(f) The Administration, when satisfied that the DEIS complies with NEPA requirements, will approve the DEIS for circulation by signing and dating the title page.

(g) A lead, joint lead, or a cooperating agency shall be responsible for printing the EIS. The initial printing of the DEIS shall be in sufficient quantity to meet requirements for copies which can reasonably be expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the DEIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement can be reviewed.

(h) The draft environmental impact statement (DEIS) shall be circulated for comment by the applicant on behalf of the Administration. The UMTA requires a public hearing during the circulation period of all DEIS's. The FHWA public hearing requirements are as described in 23 CFR Part 790 unless other procedures have been adopted and accepted in accordance with 23 CFR 771.111(h). If a public hearing is required, the DEIS shall be available for a minimum of 30 days in advance of the public hearing. The availability of the DEIS shall be included in any public hearing notice and mentioned at any public hearing presentation with a request for public comments. If a public hearing is not required, a notice shall be placed in a newspaper similar to a public hearing notice advising where the DEIS is available for review, how copies may be obtained, and where the comments should be sent.

(i) The DEIS shall be circulated to:

(1) Public officials, private interest groups, and members of the public having the potential to be directly affected or expressing an interest in the proposed action or the DEIS. Comments should be obtained directly from appropriate State and local agencies, except where review is secured by agreement through the A-95 clearinghouse.



(2) Government agencies expected to have jurisdiction or responsibility over, or interest or expertise in the proposed action.

(j) The FEDERAL REGISTER public availability notice shall establish a period of not less than 45 days for the return of comments on the DEIS. The notice and the DEIS transmittal letter shall identify where comments are to be sent.

(k) The applicant shall furnish copies of the DEIS to those States and Federal land management entities which may be significantly affected by the proposed action or any of the alternatives. These copies shall be accompanied by a request that such State or entity advise the Administration in writing of any disagreement with the evaluation of impacts in the statement. Copies of the DEIS are to be furnished to the A-95 clearinghouses of other impacted States unless the Governor has designated an agency other than the clearinghouse for this purpose. The Administration will furnish the comments received to the applicant along with a written assessment of any disagreements for incorporation into the FEIS.

(23 U.S.C. 109(h), 128, 138, and 315; 49 CFR 1.48(b))

[45 FR 71977, Oct. 30, 1980, as amended at 47 FR 21783, May 20, 1982]

**§ 771.125 Final environmental impact statements.**

(a)(1) After circulation of a DEIS and consideration of comments received, a FEIS shall be prepared by the Administration in cooperation with the applicant or, where permitted by law, by the applicant with appropriate guidance and participation by the Administration. The FEIS shall identify the preferred alternative, discuss substantive comments received on the DEIS and all reasonable alternatives considered, summarize citizen involvement, and include when appropriate a description of the procedures to be followed to assure that all environmental mitigation measures are implemented. The FEIS for actions in urbanized areas shall include the views of the MPO regarding the preferred alternative. The FEIS should also document compliance, to the extent possi-

ble, with all applicable environmental laws and Executive Orders or provide reasonable assurance that their requirements can be met.

(2) For UMTA-funded major urban mass transportation investments (new construction or extension of a fixed guideway), the applicant shall prepare a report identifying a locally preferred alternative. Approval may be given to begin preliminary engineering on the principal alternatives currently under consideration. During the course of such preliminary engineering, the applicant will refine project costs, effectiveness, and impact information with particular attention to alternative designs, operations, detailed location decisions and appropriate mitigation measures. These studies will be used to prepare the FEIS.

(b) Every reasonable effort shall be made to resolve interagency disagreements on proposed actions before processing the FEIS. If significant issues remain unresolved, the FEIS shall identify those issues and the consultations and other efforts made to resolve them.

(c) A preliminary record of decision (ROD) shall accompany the proposed FEIS during the internal review process. (See § 771.127)

(d) The FEIS shall be reviewed for legal sufficiency by the Administration's Chief Counsel or designee.

(e) The Administration will indicate approval of the FEIS for an action by signing and dating the title page. However, FEIS's prepared for actions in one or more of the following categories shall be subject to prior concurrence by the Administration Washington Headquarters and the Office of the Secretary of Transportation.

(1) Any highway project on a new location in an urbanized area of over 100,000 population or bypassing such area.

(2) Any new controlled access freeway.

(3) New construction or extension of a fixed guideway transit system.

(4) Any major transportation related development whose construction requires the preparation of an EIS (see § 771.115(a)(4)) if the proposed Administration grant assistance exceeds \$5 million or if the proposed total cost of

ically and privately funded construction is expected to exceed \$50 million.

Any action to which a Federal, State, or local government has indicated opposition on environmental grounds (which has not been resolved to the written satisfaction of the obligating agency).

Any action for which the Administration or the Office of the Secretary of Transportation requests that the action be reviewed at the Washington headquarters office.

The signature of the UMTA approving official on the title page concurred UMTA authorization to circulate the FEIS; compliance with section 4 of the UMT Act and fulfillment of grant application requirements of section 3(d)(1) and (2) and section 5(h)(1) of the UMT Act. The approval of the FEIS does not commit UMTA approval of any grant request for funding of the preferred alternative.

(l) After review of a DEIS on an action in one or more of the categories set forth in paragraph (e) of this section, the Administration with the concurrence of the Office of the Secretary of Transportation may determine that the DEIS may be processed without concurrence of the Administration Headquarters Office. This determination will include consideration of: Adequacy of early coordination with other Federal, State, and local government agencies; and Adequacy of the DEIS in identifying environmental impacts of, and feasible alternatives to, the proposed action.

Any determination under this paragraph is subject to review and withdrawal at any time prior to approval of the FEIS.

The initial printing of the FEIS shall be in sufficient quantity to meet request for copies which can be reasonably expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the FEIS shall be charged a fee which is not more than the actual cost of reproduction of the copy or may be directed to the

nearest location where the statement can be reviewed.

(i) At the time the FEIS is distributed and filed with EPA, the applicant is responsible for making the FEIS available through State and areawide clearinghouses pursuant to OMB Circular A-95, publication of a notice of availability in local newspapers, and for furnishing the document to any person(s), organizations, or agencies that made substantive comments on the DEIS or requested a copy. At this time the FEIS shall be available for public review at the applicant's offices and at appropriate Administration offices. A copy should also be made available for public review at public institutions such as local government offices, public libraries, and schools, as appropriate.

(j) The Administration shall not make any project approvals for any action requiring an EIS until the approval of a ROD, in accordance with § 771.127.

#### **§ 771.127 Record of decision.**

(a) The Administration shall complete and sign a ROD (40 CFR 1505.2) no sooner than 30 days after publication of the FEIS notice in the FEDERAL REGISTER or 90 days after publication of a notice for the DEIS, whichever is later. The ROD should document any required section 4(f) approval in accordance with § 771.135(k). A preliminary ROD is to be prepared by the Administration in consultation with the applicant. The proposed action shall not be advanced except for administrative actions taken to secure further project funding and other actions consistent with 40 CFR 1506.1 until any required ROD has been signed. A ROD is not required for those EIS's where the DEIS was filed with EPA prior to July 30, 1979 (For FHWA November 30, 1979).

(b) If the Administration subsequently wishes to take an action which was not identified as the proposed action in the final EIS, or proposes to make substantial changes to the mitigation measures or findings discussed in the record of decision, a revised preliminary record of decision shall be

processed internally by the same offices that acted on the original EIS.

§ 771.129 Reevaluation.

(a) The applicant shall consult with the Administration to assure that the proposed action or environmental conditions have not significantly changed prior to proceeding with major project approvals or authorizations.

(b) The DEIS or FEIS may be supplemented at any time. Supplements will be necessary when there have been significant changes in the proposed action, the affected environment, the anticipated impacts, or the proposed mitigation measures. However, a supplemental EIS will not be necessary if the Administration decides to fund an alternative adequately covered in the Final EIS but not identified as the proposed action. The decision to prepare a supplement to the FEIS shall not require withdrawal of the previous approvals for those aspects of the proposed action not directly affected by the changed condition or new information. A supplement is to be developed in the same manner (except that scoping is not required) as a new EIS (draft and final, with a ROD).

(c)(1) The DEIS is considered valid for a period of 3 years. If an acceptable FEIS is not submitted to the Administration within 3 years from the date of the DEIS circulation, a written evaluation of the DEIS shall be prepared by the Administration in cooperation with the applicant prior to submission of the FEIS. This evaluation must demonstrate that there have not been significant changes in the proposed action, the affected environment, the anticipated impacts or the proposed mitigation measures. If there have been changes in these factors which would be significant in the consideration of the proposed action, a supplement to the DEIS or a new DEIS shall be prepared.

(2) If major steps to advance the action (e.g., authority to acquire a substantial portion of the right-of-way, or approval of the plans, specifications and estimates) have not occurred within 3 years from the date the FEIS or FEIS supplement was approved, the Administration in cooperation with

the applicant shall prepare a written evaluation of the FEIS before further approvals may be granted. If there have been significant changes in the proposed action, the affected environment, the anticipated impacts, or proposed mitigation measures, a new supplemental EIS shall be prepared and circulated.

(3) If major steps to advance the action have not occurred within 3 years from the date the FEIS or FEIS supplement was approved, or within the time frame identified in the FEIS, the written evaluation required in paragraph (c)(2) of this section will be prepared and forwarded for review and action to the same offices that took approval action on the original FEIS.

(4) The requirements for a written evaluation as described in paragraph (c)(2) and (c)(3) of this section apply only to requests for Administration approvals after July 30, 1982.

(d) If any changes are made to the proposed action and it is uncertain if a supplemental EIS is required, the applicant will develop appropriate environmental studies or, if necessary, an EA to assess the impacts of such changes. If it is determined that such changes result in significant environmental impacts which could not be identified from reviewing the initial EIS, a supplemental EIS will be prepared. If no supplemental EIS is required after the studies or EA required by this subsection have been made, the Administration shall so indicate in the project file.

§ 771.131 Emergency action procedures.

Requests for deviations from the procedures in this regulation because of emergency situations shall be referred to the Administration's Washington Headquarters for evaluation and decision after consultation with CEQ, through DOT, in accordance with 40 CFR 1506.11.

[45 FR 71977, Oct. 30, 1980; 45 FR 854 Dec. 29, 1980]

§ 771.133 Compliance with other requirements.

(a) The FEIS or FONSI should document compliance with requirements

applicable environmental laws, Executive Orders, and other related requirements. If full compliance is not possible by the time the FEIS or EIS is prepared, the FEIS or EIS should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. Approval of the environmental document by the Administration constitutes approval of required findings and determinations that are contained therein.

(b) Sections 3(d) and 5(i) of the Act require applicants for sections 3 and 5 grants to make several declarations regarding the local decision-making process. The report required of section 5(i) will be satisfactory if a FONSI, FEIS, or an identification of the project as meeting the criteria for categorical exclusions.

Section 5(h)(2) of the UMT Act requires the Secretary of Transportation to consider the environmental effects of any proposed section 5 project and make decisions based on the public interest. The provisions of this section satisfy the statutory provision of section 5(h)(2).

71977, Oct. 30, 1980; 45 FR 85449, 1980]

**5 Section 4(f) of the Department of Transportation Act.**

(a) No Administration action will be taken from a significant publicly owned park, recreation area, or wildlife or waterfowl refuge or any significant historic site unless a determination is made that:

there is no feasible and prudent alternative to the use of land from the site; and

The proposed action includes all feasible planning to minimize harm to property resulting from such use.

Supporting information must demonstrate that there are unique values or unusual factors involved in the use of alternatives and that the environmental impacts, or cumulative disruption resulting from such activities, reaches extraordinary levels.

The Administration will determine the application of section 4(f) to the use of lands from a section 4(f) project shall be evaluated early in

the development of the action when alternatives to the proposed action are under study.

(c) Consideration under section 4(f) is not required when the Federal, State, or local official having jurisdiction over a park, recreation area, or refuge determines that it is not significant. The Administration will review the official's determination, to assure its reasonableness. In the absence of a satisfactory determination, the section 4(f) land will be considered to be significant.

(d) In determining the application of section 4(f) to historic sites, the Administration in cooperation with the applicant will consult with the State Historic Preservation Officer and local officials and will identify properties on or eligible for the National Register of Historic Places. For purposes of section 4(f), a historic site is significant only if it is on or eligible for the National Register, unless the Administration determines that the application of section 4(f) is otherwise appropriate.

(e) Where Federal lands or other large public land holdings (e.g. State forests) are administered under statutes permitting management for multiple uses, and in fact are managed for multiple uses, section 4(f) applies only to portions of such lands which are in fact being used for or are designated in the plans of the administering agency as being for park, recreation, wildlife or waterfowl refuge, or historic purposes. The determination of significance shall be made by the official having jurisdiction over the lands. The Administration will review the agency's land use determination to assure its reasonableness.

(f)(1) Section 4(f) applies to all archeological sites on or eligible for inclusion on the National Register, including those discovered during construction, unless the Administration, after consultation with the State Historic Preservation Officer and the Advisory Council on Historic Preservation, determines that the archeological resource is important chiefly for the information it contains and has minimal value for preservation in place. Such archeological resources which do not warrant preservation in

place may be recovered in accordance with a resource recovery plan developed in compliance with 36 CFR Part 800.

(2) For sites discovered during construction, where preservation of the resource in place is warranted, the section 4(f) process will be expedited. In such cases, the evaluation of feasible and prudent alternatives will take account of the level of investment already made and the review process, including the consultation with other agencies, will be shortened as appropriate.

(g) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made and determinations of significance changed late in the development of a proposed action. With the exception of the treatment of archeological resources in paragraph (f) of this section, an action may proceed without consideration under section 4(f) if the property interest in the section 4(f) type lands was acquired for transportation purposes prior to the designation or change in the determination of significance and if an adequate effort was made to identify properties protected by section 4(f) prior to project approval.

(h) The evaluations of alternatives to avoid the use of section 4(f) land and of possible measures to minimize harm to such lands shall be presented in the DEIS or EA or, for those projects classified as categorical exclusions, in a separate document. The document containing the section 4(f) evaluation shall be provided for coordination and comment to the official having jurisdiction over the section 4(f) property and to the Department of the Interior and, as appropriate, to the Department of Agriculture and the Department of Housing and Urban Development. A time limit of 45 days shall be established by the Administration for receipt of comments.

(i) The discussion in the FEIS, FONSI, or separate section 4(f) evaluation shall specifically address:

(1) The reasons why alternatives to avoid a section 4(f) property are not feasible and prudent; and

(2) All measures which will be taken to minimize harm to the section 4(f) property.

(j) The final section 4(f) evaluation will be reviewed for legal sufficiency by the Administration Chief Counsel or designee.

(k) The Administration will document and make the section 4(f) approval either in its approval of the FEIS or in the ROD for actions processed with EIS's. In those cases where the section 4(f) approval is documented in the FEIS, the Administration will summarize the basis for its section 4(f) approval in the ROD. Actions requiring the use of section 4(f) property and proposed to be processed with FONSI or classified as a categorical exclusion shall not proceed until notified by the Administration of section 4(f) approval. For those actions processed with a FONSI or classified as a categorical exclusion, any required section 4(f) approval will be documented separately.

(l) Circulation of a separate section 4(f) evaluation will be required when:

(1) A modification of the alignment or design requires the use of section 4(f) property after the categorical exclusion, FONSI, or FEIS has been processed;

(2) A modification of the alignment or design which significantly increases the use of section 4(f) land is found to be necessary after the original section 4(f) approval; or

(3) Another agency is the lead agency for the NEPA process, and another DOT element is preparing a section 4(f) statement.

(m) An analysis required by section 4(f) may involve different levels of detail where the section 4(f) involvement is addressed in a tiered EIS.

(1) When the first tier broad-stroke EIS is prepared, the detailed information necessary to complete the section 4(f) evaluation may not be available at that stage in the development of the action. In such cases, an evaluation may be made on the potential impacts that a proposed action will have on section 4(f) land and whether the impacts could have a bearing on the decision to be made. A preliminary determination may be made at this time as to whether there are feasible

ent locations or alternatives for action to avoid the use of section and. This preliminary determination shall consider all possible plan- to minimize harm to the extent the level of detail available at the tier EIS stage allows. It is recog- that such planning at this stage normally be limited to ensuring opportunities to minimize harm bsequent stages in the develop- process have not been precluded isions made at the first tier EIS This preliminary determination n incorporated into the first tier

A section 4(f) approval made additional design details are ble shall include a determination

The preliminary section 4(f) de- nation made pursuant to para- (m)(1) of this section is still

There are no feasible and pru- design alternatives to the use of ection 4(f) land, The proposed action includes all le planning to minimize harm.

#### 37 International actions.

The requirements of this regula- apply to:

Administration actions signifi- affecting the environment of obal commons outside the juris- of any nation (e.g., the oceans ntarctica).

Administration actions signifi- affecting the environment of a n nation not participating in the or not otherwise involved in the

Administration actions which sig- ntly affect the environment of a n nation and which provide a ct or action producing a toxic on or effluent that is prohibited ictly regulated in the United y Federal law.

Administration actions outside U.S., its territories, and posses- which significantly affect natu- sources of global importance desd for protection by the Presi- or by international agreement.

If communication with a foreign rment concerning environmental s or documentation is anticipat-

ed, the Administration shall coordi- nate such communication with the De- partment of State through the Office of the Secretary of Transportation.

## PART 772—PROCEDURES FOR ABATEMENT OF HIGHWAY TRAFFIC NOISE AND CONSTRUCTION NOISE

### Sec.

772.1 Purpose.

772.3 Noise standards.

772.5 Definitions.

772.7 Applicability.

772.9 Analysis of traffic noise impacts and abatement measures.

772.11 Noise abatement.

772.13 Federal participation.

772.15 Information for local officials.

772.17 Traffic noise prediction.

772.19 Construction noise.

### TABLE 1—NOISE ABATEMENT CRITERIA

#### APPENDIX A—NATIONAL REFERENCE ENERGY MEAN EMISSION LEVELS AS A FUNCTION OF SPEED

AUTHORITY: 23 U.S.C. 109(h), 109(i); 42 U.S.C. 4331, 4332; 49 CFR 1.48(b).

SOURCE: 47 FR 29654, July 8, 1982; 47 FR 33956, Aug. 5, 1982, unless otherwise noted.

### § 772.1 Purpose.

To provide procedures for noise studies and noise abatement measures to help protect the public health and welfare, to supply noise abatement criteria, and to establish requirements for information to be given to local officials for use in the planning and design of highways approved pursuant to Title 23, United States Code (U.S.C.).

### § 772.3 Noise standards.

The highway traffic noise prediction requirements, noise analyses, noise abatement criteria, and requirements for informing local officials in this regulation constitute the noise standards mandated by 23 U.S.C. 109(i). All highway projects which are developed in conformance with this regulation shall be deemed to be in conformance with the Federal Highway Administration (FHWA) noise standards.

### § 772.5 Definitions.

(a) *Design year.* The future year used to estimate the probable traffic

volume for which a highway is designed. A time, 10 to 20 years, from the start of construction is usually used.

(b) *Existing noise levels.* The noise, resulting from the natural and mechanical sources and human activity, considered to be usually present in a particular area.

(c)  $L_{10}$ . The sound level that is exceeded 10 percent of the time (the 90th percentile) for the period under consideration.

(d)  $L_{10}(h)$ . The hourly value of  $L_{10}$ .

(e) *Leq*—the equivalent steady-state sound level which in a stated period of time contains the same acoustic energy as the time-varying sound level during the same time period.

(f) *Leq(h)*. The hourly value of *Leq*.

(g) *Traffic noise impacts.* Impacts which occur when the predicted traffic noise levels approach or exceed the noise abatement criteria (Table 1), or when the predicted traffic noise levels substantially exceed the existing noise levels.

(h) *Type I projects.* A proposed Federal or Federal-aid highway project for the construction of a highway on new location or the physical alteration of an existing highway which significantly changes either the horizontal or vertical alignment or increases the number of through-traffic lanes.

(i) *Type II projects.* A proposed Federal or Federal-aid highway project for noise abatement on an existing highway.

#### § 772.7 Applicability.

(a) *Type I projects.* This regulation applies to all Type I projects unless it is specifically indicated that a section applies only to Type II projects.

(b) *Type II projects.* The development and implementation of Type II projects are not mandatory requirements of 23 U.S.C. 109(i) and are, therefore, not required by this regulation. When Type II projects are proposed for Federal-aid highway participation at the option of the highway agency, the provisions of §§ 772.9(c), 772.13, and 772.19 of this regulation shall apply.

#### § 772.9 Analysis of traffic noise impacts and abatement measures.

(a) The highway agency shall determine and analyze expected traffic noise impacts and alternative abatement measures to mitigate impacts, giving weight to the benefits and cost of abatement, and to overall social, economic and environmental effects.

(b) The traffic noise analysis shall include the following for each alternative under detailed study:

(1) Identification of existing activities, developed lands, and undeveloped lands for which development is planned, designed and programmed which may be affected by noise on the highway;

(2) Prediction of traffic noise impacts;

(3) Determination of existing noise levels;

(4) Determination of traffic noise impacts; and

(5) Examination and evaluation of alternative noise abatement measures for reducing or eliminating the impacts.

(c) Highway agencies proposing to use Federal-aid highway funds for Type II projects shall perform an analysis of sufficient scope to provide information needed to make the determination required by § 772.13(c) of this chapter.

#### § 772.11 Noise abatement.

(a) In determining and abating traffic noise impacts, primary consideration is to be given to exterior activities. Abatement will usually be necessary only where frequent human use occurs and a lowered noise level would be a benefit.

(b) In those situations where there are no exterior activities to be affected by the traffic noise, or where the exterior activities are far from or physically shielded from the roadway in a manner that prevents an impact on exterior activities, the interior of the structure shall be used as the basis of determining noise impacts.

(c) If a noise impact is identified, abatement measures listed in § 772.13(c) of this chapter must be considered.

When noise abatement measures are being considered, every reasonable effort shall be made to obtain substantial noise reductions.

Before adoption of a final environmental impact statement or finding of no significant impact, the highway agency shall identify:

(1) Noise abatement measures which are reasonable and feasible and which are likely to be incorporated in the project, and

(2) Noise impacts for which no apportionment solution is available.

The views of the impacted residents will be a major consideration in making a decision on the reasonable noise abatement measures to be proposed.

The plans and specifications will be approved by FHWA unless noise abatement measures which are reasonable and feasible are incorporated into the plans and specifications to reduce or eliminate the noise from existing activities, developments, or undeveloped lands for development is planned, designated, and programmed.

#### Federal participation.

Federal funds may be used for noise abatement measures where:

(1) Traffic noise impact has been identified,

(2) The noise abatement measures will reduce the traffic noise impact,

(3) The overall noise abatement benefits are determined to outweigh the adverse social, economic, and environmental effects and the costs of the abatement measures.

For Type II projects, noise abatement measures will not normally be required for those activities and land uses which come into existence after May 14, 1976. However, noise abatement measures may be approved for activities and land uses which come into existence after May 14, 1976, if local authorities have taken steps to exercise land use control over the remaining undeveloped lands adjacent to highways in the local jurisdiction to prevent further development of incompatible activities.

The noise abatement measures proposed below may be incorporated in

Type I and Type II projects to reduce traffic noise impacts. The costs of such measures may be included in Federal-aid participating project costs with the Federal share being the same as that for the system on which the project is located, except that Interstate construction funds may only participate in Type I projects.

(1) Traffic management measures (e.g., traffic control devices and signing for prohibition of certain vehicle types, time-use restrictions for certain vehicle types, modified speed limits, and exclusive land designations).

(2) Alteration of horizontal and vertical alignments.

(3) Acquisition of property rights (either in fee or lesser interest) for construction of noise barriers.

(4) Construction of noise barriers (including landscaping for esthetic purposes) whether within or outside the highway right-of-way. Interstate construction funds may not participate in landscaping.

(5) Acquisition of real property or interests therein (predominantly unimproved property) to serve as a buffer zone to preempt development which would be adversely impacted by traffic noise. This measure may be included in Type I projects only.

(6) Noise insulation of public use or nonprofit institutional structures.

(d) There may be situations where (1) severe traffic noise impacts exist or are expected, and (2) the abatement measures listed above are physically infeasible or economically unreasonable. In these instances, noise abatement measures other than those listed in § 772.13(c) of this chapter may be proposed for Types I and II projects by the highway agency and approved by the Regional Federal Highway Administrator on a case-by-case basis when the conditions of § 772.13(a) of this chapter have been met.

#### § 772.15 Information for local officials.

In an effort to prevent future traffic noise impacts on currently undeveloped lands, highway agencies shall inform local officials within whose jurisdiction the highway project is located of the following:



(a) The best estimation of future noise levels (for various distances from the highway improvement) for both developed and undeveloped lands or properties in the immediate vicinity of the project.

(b) Information that may be useful to local communities to protect future land development from becoming incompatible with anticipated highway noise levels, and

(c) Eligibility for Federal-aid participation for Type II projects as described in § 772.13(b) of this chapter.

#### § 772.17 Traffic noise prediction.

(a) Any traffic noise prediction method is approved for use in any noise analysis required by this regulation if it generally meets the following two conditions:

(1) The methodology is consistent with the methodology in the FHWA Highway Traffic Noise Prediction Model (Report No. FHWA-RD-77-108).\*

(2) The prediction method uses noise emission levels obtained from one of the following:

(i) National Reference Energy Mean Emission Levels as a Function of Speed (Appendix A).

(ii) Determination of reference energy mean emission levels in State Procedures for Measuring Highway Noise: Final Report, DP-45-1R.\*

(b) In predicting noise levels and assessing noise impacts, traffic characteristics which will yield the hourly traffic noise impact on a regular basis for the design year shall be used.

#### § 772.19 Construction noise.

The following general steps are to be performed for all Types I and II projects:

(a) Identify land uses or activities which may be affected by noise from construction of the project. The determination is to be performed during the project development studies.

(b) Determine the measures which are needed in the plans and specifications to minimize or eliminate adverse construction noise impacts to the community. This determination shall include a weighing of the benefits to be achieved and the overall adverse social, economic and environmental effects and the costs of the abatement measures.

(c) Incorporate the needed abatement measures in the plans and specifications.

TABLE 1—NOISE ABATEMENT CRITERIA

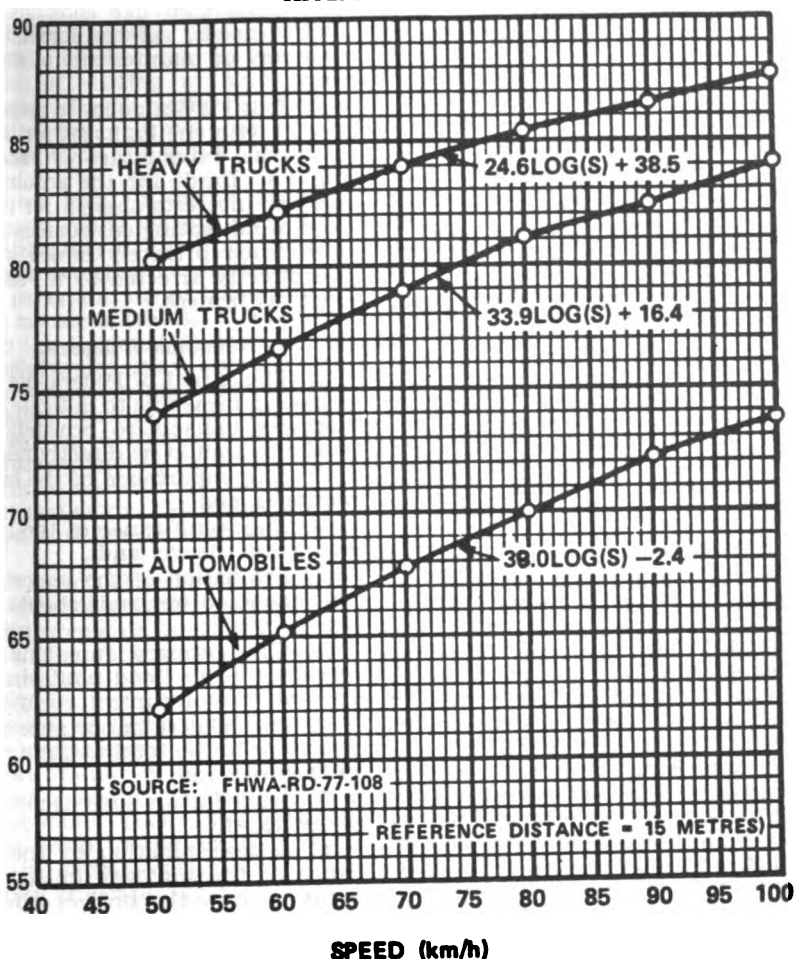
[Hourly A-Weighted Sound Level—decibels (dBA)<sup>1</sup>]

| Activity Category | Leq(h)              | L <sub>10</sub> (h) | Description of activity category                                                                                                                                                                                 |
|-------------------|---------------------|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A .....           | 57 (Exterior) ..... | 60 (Exterior) ..... | Lands on which serenity and quiet are of primary significance and serve an important need and where the preservation of these qualities is essential if the area is to continue to fulfill its intended purpose. |
| B .....           | 67 (Exterior) ..... | 70 (Exterior) ..... | Picnic areas, recreation areas, playgrounds, sports areas, parks, residences, motels, schools, churches, libraries, and hospitals.                                                                               |
| C .....           | 72 (Exterior) ..... | 75 (Exterior) ..... | Developed lands, properties, or activities not in Categories A or B above.                                                                                                                                       |
| D .....           |                     |                     | Undeveloped lands.                                                                                                                                                                                               |
| E .....           | 52 (Interior) ..... | 55 (Interior) ..... | Residences, motels, hotels, public meetings, schools, churches, libraries, hospitals, and farms.                                                                                                                 |

<sup>1</sup> Either L<sub>10</sub>(h) or Leq(h) (but not both) may be used on a project.

\*These documents are available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

APPENDIX A



LEGEND:

1. AUTOMOBILES: ALL VEHICLES WITH TWO AXLES AND FOUR WHEELS.
2. MEDIUM TRUCKS: ALL VEHICLES WITH TWO AXLES AND SIX WHEELS.
3. HEAVY TRUCKS: ALL VEHICLES WITH THREE OR MORE AXLES.

# National Reference Energy Mean Emission Levels as a Function of Speed

# **PART 777—MITIGATION OF ENVIRONMENTAL IMPACTS TO PRIVATELY OWNED WETLANDS**

Sec.

- 777.1 Purpose.
- 777.3 Background.
- 777.5 Federal participation policy.
- 777.7 Evaluation of impacts.
- 777.9 Mitigation of impacts.
- 777.11 Other considerations.

**AUTHORITY:** 42 U.S.C. 4321 et seq.; 23 U.S.C. 109(h), 138, 315; E.O. 11990; DOT Order 5660.1A; 49 CFR 1.48(b).

**SOURCE:** 45 FR 50730, July 31, 1980, unless otherwise noted.

## **§ 777.1 Purpose.**

To provide policy and procedures for the evaluation and mitigation of adverse environmental impacts to privately owned wetlands caused by new construction of Federal-aid highway projects.

## **§ 777.3 Background.**

Executive Order 11990, Protection of Wetlands, and DOT Order 5660.1A, preservation of the Nation's Wetlands, emphasize the important functions and values inherent in the Nation's wetlands. Federal agencies are required to avoid new construction in wetlands unless the head of the agency determines that: (a) There is no practicable alternative to such construction, and (b) the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

## **§ 777.5 Federal participation policy.**

(a) Those measures which the Federal Highway Administration (FHWA) and a State highway agency (SHA) find to be appropriate and necessary to mitigate significant, adverse, environmental impacts to privately owned wetlands are eligible for Federal participation where the impacts actually result from an FHWA action. The justification for the cost of proposed mitigation measures should be considered in the same context as any other public expenditure; that is, the proposed mitigation represents a reasonable public expenditure when weighed against other social, economic, and environmental values, and the benefit realized is commensurate with the pro-

posed expenditure. Mitigation measures shall give like consideration to traffic needs, safety, durability, and economy of maintenance of the highway.

(b) It is FHWA policy to permit, consistent with the limits set forth in this part, the expenditure of Federal-aid highway funds for the acquisition of land or interests therein for the purpose of mitigating environmental damages when privately owned wetlands are directly affected by a Federal-aid highway project.

## **§ 777.7 Evaluation of impacts.**

(a) The extent of Federal-aid participation in measures to mitigate adverse highway impacts to privately owned wetlands should be directly related to:

- (1) The importance of the impact on wetlands, and
- (2) The significance of the highway impact on the wetlands.

(b) Evaluation of the importance of the impacted wetlands should consider:

- (1) The primary functions of the wetlands (e.g., flood control, wildlife habitat, erosion control, etc.);
- (2) The relative importance of the functions to the total wetland resources of the area; and
- (3) Other factors such as uniqueness, aesthetics, etc.

(c) A determination of the significance of the highway impact should focus on how the project affects the stability and quality of the wetlands. This evaluation should consider the short- and long-term effects on the wetlands and the significance of any loss such as:

- (1) Flood control capacity,
- (2) Erosion control potential,
- (3) Water pollution abatement capacity, and
- (4) Wildlife habitat value.

## **§ 777.9 Mitigation of impacts.**

There are a number of actions that can be taken to minimize the impacts of highway projects on privately owned wetlands. In order to qualify for Federal-aid highway funding, actions to minimize impacts should be considered in the order listed.

) First consideration must be given to the mitigation of wetland impacts within the highway right-of-way limits. This should include the encroachment of existing wetlands and the creation of new wetlands in the highway median, borrow pit areas, interchange areas, and along the road-

) There may, in some specific cases, be compelling reasons and sufficient justification to institute mitigation measures other than those set forth in paragraph (a) of this section. In these instances, the SHA may propose and the Regional Federal Highway Administrator may approve the following mitigation measures for implementation outside the highway right-of-way on a case-by-case basis. Mitigation measures should be designed to establish, to the extent reasonable, a condition similar to that which would have existed if the project were not

The use of Federal-aid funds to improve existing publicly owned wetlands. Improvements to existing wetlands can take such forms as water-control and planting of wetland vegetation.

The use of Federal-aid funds to create replacement wetlands. The effort should be to create new wetlands or to restore wetlands. If this is not possible, then consideration should be given to the acquisition of interests in existing privately owned wetlands. In any case, the public interest in replacement wetlands must be sufficient to ensure that the area is maintained as a wetland.

#### **11 Other considerations.**

) The development of measures proposed to mitigate wetlands impacts should include consultation with appropriate State and Federal agencies.

) The definition of wetlands on a project will be in accordance with the definition issued by the U.S. Army Corps of Engineers (33 CFR 323.2(c)).

) The acquisition of proprietary interests in replacement wetlands as a mitigation measure may be in fee simple or by easement, as appropriate.

b) An SHA may acquire privately owned lands in cooperation with another public agency. Such an arrange-

ment may accomplish greater benefits than would otherwise be accomplished by the individual agency acting alone.

(e) An SHA may either transfer the title of lands acquired outside the right-of-way, without credit to Federal funds, to an appropriate public agency (e.g., U.S. Fish and Wildlife Service or State natural resource agency) or enter into an agreement with such agency to manage such lands. When such transfer occurs, there shall be an explicit agreement that the lands or interests therein transferred shall remain in the grantee agency's ownership or control so long as the lands continue to serve the purpose of the original acquisition. In the event the area transferred no longer serves the purpose of the original acquisition, the lands or interests therein transferred shall revert to the SHA for proper disposition.

(f) Participation in the cost of acquiring lands or interests therein will be limited to those costs necessary to acquire lands sufficient to provide not more than one acre of replacement lands for each acre of privately owned wetlands that is directly affected by a Federal-aid highway project. In determining the acreage of replacement land required, the acreage of wetlands maintained, restored, or created on the highway right-of-way (§ 777.9(a)) will be deducted and the amount of Federal participation in the improvement of publicly owned wetlands (§ 777.9(b)) will be considered.

(g) Federal-aid funds are not eligible for use to maintain or manage wetlands areas. Therefore, construction, improvement or acquisition of wetlands should not be considered unless arrangements can be made to assure the maintenance and viability of the wetlands resource.

(h) The acquisition of replacement wetlands as a mitigation measure is not mandatory and is applicable only where permitted by (or consistent with) State law.

(i) The policy set forth in this part does not extend to the acquisition of interests in lands outside of the highway right-of-way for the purpose of mitigating impacts caused by the taking of privately owned lands (not wetlands) that have value as wildlife

habitat which may be affected by a Federal-aid highway project.

## PART 790—PUBLIC HEARINGS AND LOCATION/DESIGN APPROVAL

### Sec.

- 790.1 Purpose.
- 790.2 Applicability.
- 790.3 Definitions for use in this part.
- 790.4 Coordination.
- 790.5 Hearing requirements.
- 790.6 Opportunity for public hearings.
- 790.7 Public hearing procedures.
- 790.8 Guidelines for the consideration of social, economic, and environmental effects.
- 790.9 Location and design approval.
- 790.10 Publication of approval.
- 790.11 Reimbursement for public involvement expenses.

**AUTHORITY:** 23 U.S.C. 101 et seq., 109(h), 128, 315; 49 U.S.C. 1651, 1657(e)(1) and 49 CFR 1.48(b), unless otherwise noted.

**SOURCE:** 39 FR 41815, Dec. 2, 1974, unless otherwise noted.

### § 790.1 Purpose.

(a) The purpose of this part is to insure, to the maximum extent practicable, that highway locations and designs reflect and are consistent with Federal, State, and local goals and objectives. The rules, policies, and procedures established by this part are intended to afford full opportunity for effective public participation in the consideration of highway location and design proposals by highway departments before submission to the Federal Highway Administration (FHWA) for approval. They provide a medium for free and open discussion and are designed to encourage early and amicable resolution of controversial issues that may arise.

(b) This part requires State highway departments to consider fully a wide range of factors in determining highway locations and highway designs. It provides for extensive coordination of proposals with public and private interests. In addition, it provides for a two-hearing procedure designed to give all interested persons an opportunity to become fully acquainted with highway proposals of concern to them and to express their views at those stages of a proposal's development

when the flexibility to respond to these views still exists.

(c) This part is further designed to assure that: (1) Possible adverse economic, social, and environmental effects relating to any proposed federally funded project on any Federal-aid highway system have been fully considered in developing such project, and that

(2) Final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe, and efficient transportation, public services, and the costs of eliminating or minimizing adverse effects.

### § 790.2 Applicability.

(a) The provisions of this part apply to the extent that alternative procedures have not been accepted or provided for by FHWA under Part 640 of Part 771.

(b) If preliminary engineering, acquisition of right-of-way or stage construction related to an undertaking to construct a portion of a Federal-aid highway route section is carried out without Federal-aid funds after FHWA approval of the highway section as part of the Federal-aid highway system, subsequent phases of the work are eligible for Federal-aid funding only if the nonparticipating work after January 18, 1969, is accomplished in accordance with this part. If, however, preliminary engineering, right-of-way acquisition or stage construction is completed without Federal-aid funds before such undertaking becomes eligible for Federal-aid funding by FHWA approval of the highway section as part of a Federal-aid highway system, such action shall not jeopardize subsequent Federal-aid highway fund participation for the highway section, provided that any preliminary engineering, right-of-way acquisition or construction accomplished subsequent to the FHWA approval of the highway system action is accomplished in accordance with applicable FHWA requirements and provided further that other FHWA requirements necessary for an FHWA approval or authorization are completed in an orderly manner.

(b) This part shall not apply to the construction of highway projects where the Federal Highway Administrator has made a formal determination that the construction of the project is urgently needed because of a national emergency, a natural disaster or catastrophic failure.

U.S.C. 109(h), 128, 138, and 315; 49 CFR 101.11(b).

49 FR 41815, Dec. 2, 1974, as amended at 47 FR 1783, May 20, 1982]

**§ 790.4 Definitions for use in this part.**

(a) A "corridor public hearing" is a public hearing that: (1) Is held before the route location is approved and before the State highway department is committed to a specific proposal.

(2) Is held to ensure that an opportunity is afforded for effective participation by interested persons in the process of determining the need for, the location of, a Federal-aid highway; and

(3) Provides a public forum that affords a full opportunity for presenting views on each of the proposed alternate highway locations and the social, economic, and environmental effects of those alternate locations.

(b) A "highway design public hearing" is a public hearing that: (1) Is held after the route location has been approved, but before the State highway department is committed to a specific design proposal.

(2) Is held to ensure that an opportunity is afforded for effective participation by interested persons in the process of determining the specific location and major design features of a Federal-aid highway; and

(3) Provides a public forum that affords a full opportunity for presenting views on major highway design features, including the social, economic, environmental, and other effects of alternate designs.

(c) "Social, economic, and environmental effects" means the direct and indirect benefits or losses to the community and to highway users. It includes such effects that are relevant and applicable to the particular location or design under consideration as

(d) Regional and community growth including general plans and proposed

land use, total transportation requirements, and status of the planning process.

(2) Conservation and preservation including soil erosion and sedimentation, the general ecology of the area as well as manmade and other natural resources, such as: park and recreational facilities, wildlife and waterfowl areas, historic and natural landmarks.

(3) Public facilities and services including religious, health, and educational facilities; and public utilities, fire protection and other emergency services.

(4) Community cohesion including residential and neighborhood character and stability, highway impacts on minority and other specific groups and interests, and effects on local tax base and property values.

(5) Displacement of people, businesses, and farms including relocation assistance, availability of adequate replacement housing, economic activity (employment gains and losses, etc.).

(6) Air, noise, and water pollution including consistency with approved air quality implementation plans, FHWA noise level standards, and any relevant Federal or State water quality standards (as set forth in Parts 770, 771, and 772 of this chapter).

(7) Aesthetic and other values including visual quality, such as: "view of the road" and "view from the road," and the joint development and multiple use of space.

This listing is not meant to be exclusive, nor does it mean that each effect considered must be given equal weight in making a determination upon a particular highway location or design. (See § 790.8)

(d) "Design approval" means that action or series of actions by which the FHWA indicates to the State highway department that the essential elements of a highway as set out in § 790.9 are satisfactory or acceptable for preparation of plans, specifications and estimates (PS&E) for actual construction.

**§ 790.4 Coordination.**

(a) When a State highway department begins considering the development or improvement of a traffic cor-

ridor in a particular area, it shall solicit the views of that State's resources, recreation, and planning agencies, and of those Federal agencies and local public officials and agencies, and public advisory groups which the State highway department knows or believes might be interested in or affected by the development or improvement. The State highway department shall establish and maintain a list upon which any Federal agency, local public official or public advisory group may enroll, upon its request, to receive notice of projects in any area specified by that agency, official, or group. The State highway departments are also encouraged to establish a list upon which other persons and groups interested in highway corridor locations may enroll in order to have their views considered. If the corridor affects another State, views shall also be solicited from the appropriate agencies within that State. All written views received as a result of coordination under this section must be made available to the public as a part of the public hearing procedures set forth in § 790.7.

(b) Other public hearings or informal public meetings, clearly identified as such, may be desirable either before the study of alternate routes in the corridor begins or as it progresses to inform the public about highway proposals and to obtain information from the public which might affect the scope of the study or the choice of alternatives to be considered, and which might aid in identification of critical social, economic and environmental effects at a stage permitting maximum consideration of these effects. State highway departments are encouraged to hold such a hearing or meeting whenever that action would further the objectives of this part or would otherwise serve the public interest.

#### § 790.5 Hearing requirements.

(a) Both a corridor public hearing and a design public hearing must be held, or an opportunity afforded for those hearings, with respect to each Federal-aid highway project that:

- (1) Is on a new location; or

(2) Would have a substantially different social, economic, or environmental effect; or

(3) Would essentially change the layout or function of connecting roads or streets.

However, with respect to Secondary Road Plan projects which are subject to this part, two hearings are not required on a project covered by paragraph (a)(1) or (2) of this section unless it will carry an average of 75 vehicles a day in the year following completion.

(b) A single combined corridor and highway design public hearing must be held, or the opportunity for such a hearing afforded, on all other projects before route location approval, except as provided in paragraph (c) of this section.

(c) Hearings are not required for those projects that are solely for such improvements as resurfacing, widening existing lanes, adding auxiliary lanes, replacing existing grade separation structures, installing traffic control devices or similar improvements unless the project:

(1) Requires the acquisition of additional right-of-way; or

(2) Would have an adverse effect upon abutting real property; or

(3) Would change the layout or function of connecting roads or streets of the facility being improved.

(d) With respect to a project for which a hearing was held, or an opportunity for a hearing afforded, before January 18, 1969, the following requirements apply:

(1) With respect to projects which have not received location approval:

(i) If location approval is not requested within 3 years after the date of the hearing or an opportunity for a hearing, compliance with the corridor hearing requirements is required unless a substantial amount of right-of-way has been acquired.

(ii) If location approval is requested within 3 years after the date of the hearing or an opportunity for a hearing, compliance with the corridor hearing requirements is not required.

(2) With respect to those projects which have not received design approval:

If design approval is not requested within 3 years after the date of the hearing or an opportunity for a hearing in compliance with the design hearing requirements is required.

If design approval is requested within 3 years after the date of the hearing or an opportunity for a hearing in compliance with the design hearing requirements is nevertheless required unless the Division Administrator finds that the hearing adequately dealt with design issues relating to design features.

If location approval is not required within 3 years after the date of the related corridor hearing held, or an opportunity for a hearing afforded, on this part, a new hearing must be held for the opportunity afforded for a hearing.

If design approval is not requested within 3 years after the date of the design hearing held, or an opportunity for a hearing afforded, on this part, a new hearing must be held for the opportunity afforded for a hearing.

With respect to any project for which a public hearing has been held under Federal-aid procedures, and for which it is determined by the State highway department and the Division Administrator that a new hearing is needed to consider supplemental information on social, economic, or environmental effects relative to proposals presented at a previous public hearing with respect to additional proposals, as appropriate, a new corridor design hearing should be held, recommended by the State and approved by the Division Administrator. A new corridor hearing held in accordance with this section may be combined with the design hearing, whether or not a design hearing for the project has been previously held. In such instances, the location shall be considered and a new request for location approval shall be submitted together with the request for design approval.

#### Opportunity for public hearings.

A State may satisfy the requirements for a public hearing by (1) holding a public hearing, or (2) publishing notices of opportunity for public

hearing and holding a public hearing if any written requests for such a hearing are received. The procedure for requesting a public hearing shall be explained in the notice. The deadline for submission of such a request may not be less than 21 days after the date of publication of the first notice of opportunity for public hearing, and no less than 14 days after the date of publication of the second notice of opportunity for public hearing.

(b) A copy of the notice of opportunity for public hearing shall be furnished to the Division Administrator at time of publication. If no requests are received in response to a notice within the time specified for the submission of those requests, the State highway department shall certify that fact to the Division Administrator.

(c) The opportunity for another public hearing shall be afforded in any case where proposed locations or designs are so changed from those presented in the notices specified above or at a public hearing as to have a substantially different social, economic, or environmental effect, or where § 790.5(g) is applicable.

(d) The opportunity for a public hearing shall be afforded in each case in which either the State highway department or the Division Administrator is in doubt as to whether a public hearing is required.

(e) Public hearing procedures authorized and required by State law may be followed in lieu of any particular hearing requirement of this section or § 790.7 if, in the opinion of the Administrator, such procedures are reasonably comparable to that requirement.

#### § 790.7 Public hearing procedures.

(a) *Notice of public hearing.* (1) When a public hearing is to be held, a notice of public hearing shall be published at least twice in a newspaper having general circulation in the vicinity of the proposed undertaking. The notice should also be published in any newspaper having a substantial circulation in the area concerned, such as foreign language newspapers and local community newspapers. The first of the required publications shall be



from 30 to 40 days before the date of the hearing, and the second shall be from 5 to 12 days before the date of the hearing. The timing of additional publications is optional.

(2) In addition to publishing a formal notice of public hearing, the State highway department shall mail copies of the notice to appropriate news media, the State's resource, recreation, and planning agencies, and appropriate representatives of the Departments of Interior and Housing and Urban Development. The State highway department shall also mail copies to other Federal agencies who have requested notice of hearing and other groups or agencies who, by nature of their function, interest, or responsibility the highway department knows or believes might be interested in or affected by the proposal. The State highway department shall establish and maintain a list upon which any Federal agency, local public official, public advisory group or agency, civic association or other community group may enroll upon its request to receive notice of projects in any area specified by that agency, official, or group.

(3) Each notice of public hearing shall specify the date, time, and place of the hearing and shall contain a description of the proposal. To promote public understanding, the inclusion of a map or other drawing as part of the notice is encouraged. The notice of public hearing shall specify that maps, drawings, and other pertinent information developed by the State highway department and written views received as a result of the coordination outlined in § 790.4(a) will be available for public inspection and copying and shall specify where this information is available; namely, at the nearest State highway department office or at some other convenient location in the vicinity of the proposed project.

(4) A notice of highway design public hearing shall indicate that tentative schedules for right-of-way acquisition and construction will be discussed.

(5) Notices of public hearing shall indicate that relocation assistance programs will be discussed.

(6) The State highway department shall furnish the Division Engineer

with a copy of the notice of public hearing at the time of first publication.

(b) *Conduct of public hearing.* (Public hearings are to be held at place and time generally convenient for persons affected by the proposed undertaking.

(2) Provision shall be made for submission of written statements and other exhibits in place of, or in addition to, oral statements at a public hearing. The procedure for the submissions shall be described in the notice of public hearing and at the public hearing. The final date for receipt of such statements or exhibits shall be at least 10 days after the public hearing.

(3) At each required corridor public hearing, pertinent information about location alternatives studied by the State highway department shall be made available. At each required highway design public hearing, information about design alternatives studied by the State highway department shall be made available.

(4) The State highway department shall make suitable arrangements for responsible highway officials to be present at public hearings as necessary to conduct the hearings and to be responsive to questions which may arise.

(5) The State highway department shall describe the State-Federal relationship in the Federal-aid highway program by an appropriate brochure, pamphlet, or statement, or by other means.

(6) A State highway department may arrange for local public officials to conduct a required public hearing. The State shall be appropriately represented at such public hearing and responsible for meeting other requirements of this part.

(7) The State highway department shall explain the relocation assistance program and relocation assistance payments available.

(8) At each public hearing the State highway department shall announce or otherwise explain that, at any time after the hearing and before the location or design approval related to the hearing, all information developed in support of the proposed location and

ign will be available upon request, public inspection and copying.

( ) To improve coordination with State highway department, it is table that the Division Adminis- or or his representative attend a lic hearing as an observer. At a ring, he may properly explain pro- ral and technical matters, if asked o so. An FHWA decision regarding oposed location or design will not ade before the State highway de- ment has requested location or n approval in accordance with 9.9.

*Transcript.* (1) The State high- department shall provide for the ing of a verbatim written tran- t of the oral proceedings at each ic hearing. It shall submit a copy -e transcript to the Division Ad- strator within a reasonable period ally less than 2 months) after the ic hearing, together with:

Copies of, or reference to, or pho- ps of each statement or exhibit or filed in connection with a ic hearing.

Copies of, or reference to, all in- ation made available to the public re the public hearing.

The State highway department make copies of the materials de- ed in paragraph (c)(1) of this sec- available for public inspection copying not later than the date ranscript is submitted to the Divi- Administrator.

**8 Guidelines for consideration of ocial, economic, and environmental ffects.**

*Pre-September 29, 1972.* State way departments shall consider d, economic, and environmental ts before submission of requests ocation or design approval, wheth- r not a public hearing has been . Consideration of social, econom- nd environmental effects shall in- e an analysis of information sub- ed to the State highway depart- t in connection with public hear- or in response to the notice of the tion or design for which a State way department intends to re- t approval. It shall also include sideration of information devel- d by the State highway depart-

ment or gained from other contacts with interested persons or groups.

(b) *Modified guidelines—Post-Sep- tember 29, 1972—*(1) *Application.* These modified guidelines apply to projects which have not received PS&E approval as of September 29, 1972. They do not apply to projects which are already in various stages of physical construction or are exempt under the emergency provisions of § 790.2(c).

(2) *Procedures.* (i) Projects for which location and/or design approval are re- quested after September 29, 1972, in accordance with § 790.9 cannot receive such approval unless the request for location and design approval is accom- panied by reports and other docu- ments showing that the development of the project has taken into consid- eration the need for fast, safe, and effi- cient transportation together with highway costs, traffic benefits and public services including provisions of national defense; and which, to the extent applicable, discuss the antici- pated economic, social, and environ- mental effects, as defined in § 790.3(c), of the proposal and alternatives under consideration.

(ii) In addition to coverage of the significant differences and reasons supporting the alternative locations and designs, discussions of the re- quired items in § 790.3(c) and other economic, social, and environmental effects which were raised during public hearings or which were other- wise considered shall include:

(A) Identification of the adverse ef- fects,

(B) Appropriate measures to elimi- nate or minimize the adverse effects,

(C) The estimated costs (expressed in either monetary, numerical, or qual- itative terms) of the measures consid- ered.

(iii) The degree of analysis of the items may vary, depending upon the scope and the nature of project, the stage of project development, and the extent of the adverse effect.

(iv) Where material required by this paragraph has been previously submit- ted pursuant to other requirements, such as those in § 790.9 or in Part 771 of this chapter, the State highway de-

partment may either resubmit such material or make reference to it.

(v) Projects which have already received design approval, as defined herein, as of September 29, 1972, may receive PS&E approval, if otherwise satisfactory, on the basis of past State highway department submissions which identify and document the economic, social, and environmental effects previously considered with respect to these advanced projects, together with a supplemental report, if necessary, covering the consideration and disposition of the items not previously covered and now listed herein in § 790.3(c). The supplemental report shall be prepared by the State and submitted to the Division Administrator not later than the time of submission of PS&E documents for the next Federal-aid improvement of the highway section. This supplemental documentation may take the form of statements in the program submission (PR-1 or PR-9 forms and attachments) relative to the overall proposal being advanced, unless the Division Administrator determines that a more detailed report is warranted.

#### § 790.9 Location and design approval.

(a) This section applies to all requests for location or design approval whether or not public hearings, or the opportunity for public hearings, are required by this part.

(b) Each request by a State highway department for approval of a route location or highway design must include a study report containing the following:

(1) Descriptions of the alternatives considered and a discussion of the anticipated social, economic, and environmental effects of the alternatives, pointing out the significant differences and the reasons supporting the proposed location or design. In addition, the report must include an analysis of the relative consistency of the alternatives with the goals and objectives of any urban plan that has been adopted by the community concerned.

(i) Location study reports must describe the termini, the general type of facility, the nature of the service which the highway is intended to pro-

vide, and other major features of the alternatives.

(ii) Design study reports must describe essential elements such as design standards, number of traffic lanes, access control features, general horizontal and vertical alignment, right-of-way requirements and location of bridges, interchanges, and other structures.

(2) Appropriate maps or drawings of the location or design for which approval is requested.

(3) A summary and analysis of the views received concerning the proposed undertaking.

(4) A list of any prior studies relevant to the undertaking.

(c) In addition, each request by a State highway department for approval of a route location or highway design must be accompanied by documentation or reports or other acceptable material indicating compliance with § 790.8.

(d) At the time it requests approval under this section, each State highway department shall publish in a newspaper meeting the requirements of § 790.7(a)(1) a notice describing the location or design, or both, for which it is requesting approval. The notice shall include a narrative description of the location or design. Where practicable, the inclusion of a map or sketch of that location or design is desirable. In any event, the publication shall state that such maps or sketches as well as all other information submitted in support of the request for approval are publicly available at a convenient location.

(e) The following requirements apply to the processing of requests for highway location or highway design approval:

(1) *Location approval.* The Division Administrator may approve a route location and authorize design engineering only after the following requirements are met:

(i) The State highway department has requested route location approval.

(ii) Corridor public hearings required by this part have been held or the opportunity for hearings has been afforded.

(iii) The State highway department has submitted public hearing trans-

pts and certificates required by section 128, title 23, United States Code.

v) The requirements of this part of other applicable laws and regulations.

3) Design approval. The Division Administrator may approve the highway design and authorize right-of-way acquisition, approve right-of-way easements, approve construction plans, specifications, and estimates, or authorize construction, only after the following requirements have been met: The route location has been approved.

4) The State highway department requested highway design approval.

5) Highway design public hearings required by this part have been held, the opportunity for hearings has been afforded.

6) The State highway department submitted the public hearing transcripts and certificates required by section 128, title 23, United States Code. The requirements of this part of other applicable laws and regulations.

[Reserved]

Secondary Road Plan agreements, unless amended in accordance with Subchapter F, Part 642 of this title, shall incorporate procedures similar to those required for other projects and shall include provisions for:

Route location and highway design approval,

Preparation of study reports as required in § 790.9(b), and

Corridor and highway design public hearings in all cases where they would be required for Federal-aid projects not administered under the

Secondary Road Plan. Project actions by the Division Administrator or submissions to the Division Administrator which are not now required should not be established for Secondary Road Plan projects as a result of this part.

[39 FR 41815, Dec. 2, 1974, as amended at 42 FR 26652, May 25, 1977]

**§ 790.10 Publication of approval.**

In cases where a public hearing was held, or the opportunity for a public hearing afforded, the State highway department shall publish notice of the action taken by the Division Administrator on each request for approval of a highway location or design, or both, in a newspaper meeting the requirements of § 790.7(a)(1) within 10 days after receiving notice of that action. The notice shall include a narrative description of the location and/or design, as approved. Where practicable, the inclusion of a map or sketch of that location or design is desirable. In any event, the publication shall state that such maps or sketches as well as all other information concerning the approval is publicly available at a convenient location.

**§ 790.11 Reimbursement for public involvement expenses.**

Public hearings and other project-related forms of public participation are integral parts of the preliminary engineering process. Reasonable project-related costs associated with such activities sponsored by highway agencies (other than personal expenses of individuals or groups) are eligible for reimbursement with Federal-aid funds on the same basis as other preliminary engineering costs.

## SUBCHAPTER I—PUBLIC TRANSPORTATION

### PART 810—MASS TRANSIT AND SPECIAL USE HIGHWAY PROJECTS

#### Subpart A—General

Sec.

810.2 Purpose.

810.4 Definitions.

810.6 Prerequisites for projects authorized by 23 U.S.C. 137, 142, or 149.

#### Subpart B—Highway Public Transportation Projects and Special Use Highway Facilities

810.100 Purpose.

810.102 Eligible projects.

810.104 Applicability of other provisions.

810.106 Approval of fringe and transportation corridor parking facilities.

810.108 Review and coordination with Urban Mass Transportation Administrator.

810.110 Notifications.

#### Subpart C—Making Highway Rights-of-Way Available for Mass Transit Projects

810.200 Purpose.

810.202 Applicability.

810.204 Application by mass transit authority.

810.206 Review by the State Highway Agency.

810.208 Action by the Federal Highway Administrator.

810.210 Authorization for use and occupancy by mass transit.

810.212 Use to be without charge.

#### Subpart D—Federal-Aid Urban System Nonhighway Public Mass Transit Projects

810.300 Purpose.

810.302 Eligible projects.

810.304 Submission of projects.

810.306 Reservation of funds.

810.308 Approval of urban system nonhighway public mass transit projects.

810.310 Notification.

810.312 Applicability of other provisions.

**AUTHORITY:** 23 U.S.C. 137, 142, 149, and 315; Delegation of authority by the Secretary of Transportation, 49 CFR 1.48(b) and 1.51(f).

**SOURCE:** 42 FR 47338, Sept. 20, 1977, unless otherwise noted.

#### Subpart A—General

##### § 810.2 Purpose.

The purpose of the regulations in this subpart is to implement sections 137, 142, and 149 of Title 23 U.S.C. 137, 142, and 149 of Title 23 U.S.C. 137 and 142 relate generally to the use of Federal-aid highway funds for various types of public transportation projects; section 149 permits the Secretary to approve as a project on the Federal-aid system the construction of exclusive or preferential truck lanes.

##### § 810.4 Definitions.

(a) Except as otherwise provided, the terms defined in 23 U.S.C. 101(a) and used in this subpart as so defined.

(b) The following terms, where used in the regulations in this subpart, have the following meanings:

(1) "Bus passenger loading areas and facilities (including shelters)" means areas and facilities located at or near passenger loading points for safety, protection, comfort, or convenience of bus passengers. The term "areas and facilities" includes but is not limited to access roads, buildings, structures, equipment, improvements, and interest in land.

(2) "Exclusive or preferential bus truck, or emergency vehicle lanes" means one or more lanes of a highway facility or an entire highway facility where buses, trucks or emergency vehicles, or any combination thereof, at given, at all times or at any regular scheduled times, a priority or preference over some or all other vehicles moving in the general stream of moving highway traffic.

(3) "Fringe and transportation corridor parking facilities" means those facilities located in fringe areas which are intended to be used for the temporary storage of vehicles and which are located and designed so as to facilitate the safe and convenient transfer of persons traveling in such vehicles to and from existing or planned public transportation facilities. The term "Parking facilities" includes but is not limited to access roads, buildings,

structures, equipment improvements and interests in land.

4) "Fringe areas" means those areas outside the central business district of urban areas.

5) "Highway traffic control devices" means traffic control devices as defined by the currently approved Manual on Uniform Traffic Control Devices for Streets and Highways."<sup>1</sup>

6) "Nonhighway public mass transit project" means a project to develop or improve public mass transit facilities and equipment. A project need not be physically located or operated on a route designated as part of the Federal urban system, but must be included in and related to a program for development or improvement of an urban public mass transit system which includes either the construction of fixed rail facilities, or the purchase of passenger equipment, or both. Passenger equipment includes buses, fixed rolling stock and other transportation equipment.

7) "Metropolitan Planning Organization" means that organization designated by the Governor as being responsible, together with the State, for complying with the provisions of 23 U.S.C. 134, as required by 23 U.S.C. 134(3), and capable of meeting the requirements of section 3(a)(2) and 4(a), and 5(g)(1) and (1) of the Urban Mass Transportation Act of 1954, as amended, 49 U.S.C. 1602(a)(2)(e)(1), 1603(a), and 1604(g)(1) and (2). This organization shall be the medium for cooperative decisionmaking between the principal elected officials of general purpose local government.

8) "Responsible local officials" means: (i) In areas under 50,000 population, the principal elected officials of general purpose local governments; or (ii) In urbanized areas, the principal elected officials of general purpose local governments acting through the Metropolitan Planning Organization designated by the Governor. For purposes of this definition the term "Governor" includes the Mayor of the District of Columbia and the Governor of Puerto Rico.

<sup>1</sup> The MUTCD is incorporated by reference at 23 CFR 625.3.

**§ 810.6 Prerequisites for projects authorized by 23 U.S.C. 137, 142, or 149.**

(a) Programs for projects in an urbanized area may not be approved by the Federal Highway Administrator and the Urban Mass Transportation Administrator unless they find that the projects are based on a continuing comprehensive transportation planning process, carried on in accordance with 23 U.S.C. 134 as prescribed in 23 CFR Part 450, Subpart A and included in a transportation improvement program approved pursuant to 23 CFR Part 450, Subpart C and 23 CFR Part 630, Subpart A (Federal-Aid Program Approval and Authorization).

(b) Routes and schedules on public mass transportation systems in urbanized areas which receive Federal-aid assistance under 23 U.S.C. 137 or 142, which are established or significantly altered as the result of receiving this assistance, shall be based upon a continuing comprehensive transportation planning process carried on in accordance with 23 U.S.C. 134 as prescribed in 23 CFR Part 450, Subpart A.

(c) A proposed urban system public transportation project not in an urbanized area must be included in a program of projects approved pursuant to 23 CFR Part 630, Subpart A (Federal-Aid Programs Approval and Authorization).

(d) The full utilization assurances required under 23 U.S.C. 142(f) for each project under this part shall be deemed to have been made if the project is included in the transportation improvement program required by 23 CFR Part 450, Subpart C.

## **Subpart B—Highway Public Transportation Projects and Special Use Highway Facilities**

### **§ 810.100 Purpose.**

The purpose of the regulations in this subpart is to implement 23 U.S.C. 137, 142(a)(1), 142(b), and 149, which by delegation of the Secretary allow the Federal Highway Administrator to approve various highway public mass transportation improvements and special use highway facilities as Federal-aid highway projects.

§ 810.102 Eligible projects.

Under this subpart the Federal Highway Administrator may approve on any Federal-aid system projects which encourage the development, improvement, and use of public mass transportation systems operating motor vehicles (other than on rail) so as to increase the traffic capacity of the Federal-aid system for the movement of persons. Eligible projects include:

(a) Exclusive or preferential bus, truck, or emergency vehicle lanes, except that construction of exclusive or preferential lanes limited to use by emergency vehicles can be approved only on the Federal-aid Interstate System;

(b) Highway traffic control devices;

(c) Bus passenger loading areas and facilities (including shelters) that are on or serve a Federal-aid system; and

(d) Fringe and transportation corridor parking facilities to serve bus and other public mass transportation passengers.

§ 810.104 Applicability of other provisions.

(a) Project authorized under § 810.102 shall be deemed to be highway projects for all purposes of title 23, U.S.C., and shall be subject to all regulations of Title 23 CFR.

(b) Projects approved under this subpart on the Federal-aid Interstate System for exclusive or preferential bus, truck, and emergency vehicle lanes are excepted from the minimum four-lane requirement of 23 U.S.C. 109(b).

(c) The Federal proportional share of a project approved under this subpart shall be the same as that provided in 23 U.S.C. 120 for any other project on the Federal-aid system on which the project is located or which it serves.

§ 810.106 Approval of fringe and transportation corridor parking facilities.

(a) In approving fringe and transportation corridor parking facilities, the Federal Highway Administrator:

(1) Shall make a determination that the proposed parking facility is located in a fringe area;

(2) Shall require that the parking facility be located and designed in con-

junction with existing or planned public transportation facilities;

(3) May approve acquisition of land proximate to the right-of-way of a Federal-aid highway;

(4) May approve construction of publicly-owned parking facilities on land within the right-of-way of a Federal-aid highway, including the use of the airspace above and below the established gradeline of the highway pavement, and on land, acquired with or without Federal-aid funds which is not within the right-of-way of a Federal-aid highway but which was acquired in accordance with the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (84 Stat 1894, 42 U.S.C. 4601 *et seq.*), and;

(5) May permit the charging of fees for the use of the facility, except that the rate of the fee shall not be in excess of that required for maintenance and operation (including compensation to any person for operating such facility).

(b) The Federal Highway Administrator shall not approve a fringe and transportation corridor parking facility project unless:

(1) He has determined that the State, or the political subdivision thereof, where the project is to be located, or any agency or instrumentality of such State or political subdivision, has the authority and capability of constructing, maintaining, and operating the facility;

(2) He has received assurance from the State that the facility will remain in public ownership as long as the facility is needed and that any change in ownership shall have his prior approval;

(3) He has entered into an agreement governing the financing, maintenance, and operation of the parking facility with the State, political subdivision, agency, or instrumentality which shall include necessary requirements to insure that adequate public transportation services will be available to persons using the facility; and

(4) He has approved design standards for constructing the facility developed in cooperation with the State highway agency.

(c) A State, political subdivision, agency, or instrumentality thereof

contract with any person to operate any parking facility constructed under this section.

**§ 810.204** Review and coordination with Urban Mass Transportation Administrator.

The Federal Highway Administrator and the Urban Mass Transportation Administrator will jointly review the transportation improvement projects. The Federal Highway Administrator will coordinate with the Urban Mass Transportation Administrator on approval of State urban system projects of projects under 23 U.S.C. 105. The Federal Highway Administrator will provide the Urban Mass Transportation Administrator with copies of all plans, specifications, and estimates which involve highway projects of mass transportation projects.

#### **§ 810.205** Notifications.

The Federal Highway Administrator will notify the Urban Mass Transportation Administrator of all projects approved under this subpart.

### **Part C—Making Highway Rights-of-Way Available for Mass Transit Projects**

#### **§ 810.200** Purpose.

The purpose of the regulations in this subpart is to implement 23 U.S.C. 134, which permits the Federal Highway Administrator to authorize a State to make available to a publicly-owned mass transit authority existing highway rights-of-way for rail or other highway public mass transit facilities.

#### **§ 810.202** Applicability

The provisions of this subpart are applicable to the rights-of-way of Federal-aid highways in which Federal-aid highway funds have participated or will participate in any part of the cost of the highway.

The provisions of this subpart do not preclude acquisition of rights-of-way for use involving mass transit facilities under the provisions of Subparts B and D of this part. Rights-of-way made available under this subpart may be used in combination with

rights-of-way acquired under Subparts B and D of this part.

[42 FR 47338, Sept. 20, 1977; 43 FR 15321, Apr. 12, 1978]

#### **§ 810.204** Application by mass transit authority.

A publicly-owned mass transit authority desiring to utilize land existing within the publicly acquired right-of-way of any Federal-aid highway for a rail or other nonhighway public mass transit facility may submit an application therefor to the State highway agency.

#### **§ 810.206** Review by the State Highway Agency.

The State highway agency, after reviewing the application, may request the Federal Highway Administrator to authorize the State to make available to the publicly-owned mass transit authority the land needed for the proposed facility. A request shall be accompanied by evidence that utilization of the land for the proposed purposes will not impair future highway improvements or the safety of highway users.

#### **§ 810.208** Action by the Federal Highway Administrator.

The Federal Highway Administrator after consultation with the Urban Mass Transportation Administrator may authorize the State to make available to the publicly-owned mass transit authority the land needed for the proposed facility, if he finds:

(a) The evidence submitted by the State highway agency under § 810.206 to be satisfactory;

(b) The public interest will be served thereby; and

(c) The proposed action in urbanized areas is based on a continuing comprehensive transportation planning process carried on in accordance with 23 U.S.C. 134 as described under 23 CFR Part 450, Subpart A.

#### **§ 810.210** Authorization for use and occupancy by mass transit.

(a) Upon being authorized by the Federal Highway Administrator, the State shall enter into a written agreement with the publicly-owned mass



transit authority relating to the use and occupancy of highway right-of-way subject to the following conditions:

(1) That any significant revision in the design, construction, or use of the facility for which the land was made available shall receive prior review and approval by the State highway agency.

(2) The use of the lands made available to the publicly-owned mass transit authority shall not be transferred to another party without the prior approval of the State highway agency.

(3) That, if the publicly-owned mass transit authority fails within a reasonable or agreed time to use the land for the purpose for which it was made available, or if it abandons the land or the facility developed, such use shall terminate and any abandoned facility developed or under development by the publicly-owned mass transit authority shall be disposed of in a manner prescribed by the State.

(b) A copy of the use and occupancy agreement and any modification under paragraphs (a) (1), (2), and (3) of this section shall be forwarded to the Federal Highway Administrator.

**§ 810.212 Use to be without charge.**

The use and occupancy of the lands made available by the State to the publicly-owned transit authority shall be without charge. Costs incidental to making the lands available for mass transit shall be borne by the publicly-owned mass transit authority.

**Subpart D—Federal-Aid Urban System Nonhighway Public Mass Transit Projects**

**§ 810.300 Purpose.**

The purpose of the regulations in this subpart is to implement 23 U.S.C. 142(a)(2), which allows the Urban Mass Transportation Administrator, by delegation of the Secretary, to approve nonhighway public mass transit projects as Federal-aid urban system projects, and 23 U.S.C. 142(c), which permits approval of nonhighway public mass transit projects in lieu of highway projects on the Federal-aid urban system in urbanized areas.

**§ 810.302 Eligible projects.**

(a) Eligible projects are those defined as nonhighway public mass transit projects in § 810.4 of this chapter subject to the limitations in paragraph (b) of this section.

(b) All projects under this subpart for the construction, reconstruction, or improvement of fixed facilities shall be located within the urban boundaries established under 23 CFR Part 470, Subpart B.

**§ 810.304 Submission of projects.**

(a) An application for an urban system nonhighway public mass transit project (which shall constitute a submission of plans, specifications, and estimates for the project) shall be developed by the Governor or by a person or entity authorized by State or local law to plan, organize, operate, manage, or otherwise provide mass transportation service in and for the urban areas. The application shall be prepared in accordance with procedures applicable to the preparation of an application for a capital or technical assistance grant from UMTA as set forth in the UMTA External Operating Manual (UMTA Order 1000 August 22, 1972, as amended).<sup>2</sup>

(b) The application should be submitted to the UMTA Administrator. Upon submission of the application to the UMTA Administrator, the State highway agency should submit a request to the FHWA Administrator for a reservation of apportioned Federal aid Urban System funds.

**§ 810.306 Reservation of funds.**

(a) When the FHWA Administrator receives the request for fund reservation, he will:

(1) Determine whether sufficient Federal-aid urban system funds are available to finance the Federal share of the cost of the proposed project; and

(2) Notify the State highway agency and the UMTA Administrator of the reservation.

(b) The apportioned funds reserved for the proposed project under paragraph

<sup>2</sup> Available for inspection and copying as prescribed in 49 CFR Part 7, App. G.

graph (a) of this section shall remain available for obligation unless the HWA Administrator is notified that the application has been disapproved by the UMTA Administrator, or unless the local responsible officials in whose jurisdiction the project is to be located and the State highway agency jointly request the withdrawal of the project application.

**§ 810.308 Approval of urban system non-highway public mass transit projects.**

(a) An urban system public mass transit project may be approved by the UMTA Administrator when he—

(1) Determines that the application and project are in accordance with the provisions of the UMTA External Operating Manual (UMTA Order 1000.2 dated August 22, 1972, as amended) relating to capital assistance or technical studies grants, as appropriate; and

(2) Receives notification from the FHWA Administrator that sufficient portioned Federal-aid urban system funds are available to finance the Federal share of the cost of the proposed project.

(b) Approval of the plans, specifications, and estimates of a nonhighway public mass transit project shall be deemed to occur on the date the UMTA Administrator approves the project application. This approval which is subject to the availability of budget authority at the time of obligation, will obligate the United States to pay its proportional share of the cost of the project.

(c) Upon approval of an urban system nonhighway public mass transit project, the UMTA Administrator will execute a grant contract covering implementation of the project with the Governor, or with any person or entity designated by the Governor including the State highway agency, which is authorized by State or local law to plan, organize, operate, manage, or otherwise provide mass transportation services and facilities in and for the urban area.

**§ 810.310 Notification.**

The UMTA Administrator will notify the FHWA Administrator of all projects approved under this subpart.

**§ 810.312 Applicability of other provisions.**

The Federal proportional share of the cost of an urban system nonhighway public mass transit project approved under this subpart shall be equal to the Federal share which would have been paid if the project were a highway project, as determined under 23 U.S.C. 120(a).

**PART 820—RURAL HIGHWAY PUBLIC TRANSPORTATION DEMONSTRATION PROGRAM**

**Sec.**

820.1 Purpose.

820.3 Definitions.

820.5 Geographic scope.

820.7 Eligible project expenditures.

820.9 Responsibilities.

820.11 Content of applications.

820.13 Project selection criteria.

820.15 Effective utilization by elderly and handicapped persons.

820.17 Civil Rights Act, Title VI responsibilities.

820.19 Submission date.

**AUTHORITY:** Pub. L. 93-87, sec. 147, 87 Stat. 250; Pub. L. 93-643, sec. 103, 88 Stat. 2281; and 49 CFR 1.48(c)(1) and 1.51(g).

**SOURCE:** 40 FR 16301, Apr. 11, 1975, unless otherwise noted.

**§ 820.1 Purpose.**

(a) The purpose of this part is to prescribe policies and procedures for administering the Rural Highway Public Transportation Demonstration Program. Section 147 of the Federal-Aid Highway Act of 1973, as amended, through delegation of authority by the Secretary of Transportation, authorizes the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) to carry out demonstration projects to encourage the development, improvement, and use of public mass transportation systems operating vehicles on highways for transportation of passengers within rural areas and small urban areas, and between such areas and urbanized areas, in order to enhance access of rural populations to employment, health care, retail centers, education, and public services.

(b) The program is intended to:

(1) Increase the mobility of those persons in rural areas who do not have reasonable access to alternate forms of transportation and are often deprived of mobility where public transportation is inadequate or nonexistent,

(2) Encourage the various programs or agencies which provide transportation or social services to develop a coordinated approach to the organization and financing of public transportation,

(3) Develop the results of the demonstration into a useful guide for rural areas needing public transportation, and

(4) Develop the technical, organizational, and economic information needed for future decisions regarding national programs for rural transportation.

### § 820.3 Definitions.

As used herein:

*"Applicant"* means a public agency or nonprofit public purpose organization, preferably with State or areawide responsibilities, or an Indian tribe on a Federal or State reservation.

*"Operating expenses"* means costs directly related to system operations and shall include expenses for driver salaries, fuel, and maintenance.

*"Program"* means the Rural Highway Public Transportation Demonstration Program authorized by section 147 of the Federal-Aid Highway Act of 1973, Pub. L. 93-87, August 13, 1973, as amended.

*"Rural areas"* means all areas of a State not included in either an urbanized area designated by the Bureau of the Census or an urban place designated by the Bureau of the Census as having a population of 5,000 or more.

*"Small urban area"* means an urban place as designated by the Bureau of the Census, having a population between 5,000 and 50,000 and not within any urbanized area.

*"State agency"* means the State department of transportation, or State highway department if a State department of transportation is not established, except that some other agency designated by the Governor may be approved by the FHWA and UMTA to be the State agency.

### § 820.5 Geographic scope.

Projects approved under this part must serve rural residents and may include service by which passengers are transported to small urban areas, within small urban areas, and between these areas and urbanized areas when such service will enhance the mobility of rural populations.

### § 820.7 Eligible project expenditures.

(a) Projects eligible for Federal funds under this part include, but are not limited to: (1) Highway traffic control devices; (2) the construction of passenger loading areas and facilities including shelters; (3) fringe and transportation corridor parking facilities to serve bus and other public mass transportation passengers; (4) the purchase of passenger equipment other than rolling stock for fixed rail; and (5) the payment from the General Fund for operating expenses.

(b) Program funds shall not be used to provide operating subsidies for existing operations, nor for overhead and administrative costs incurred by State agencies. Reasonable expenses for operating costs that are an integral part of new demonstration projects, as well as project supervision, monitoring, and evaluation costs, are eligible items of expense, if properly distributed as project costs. Payments for operating expenses shall not exceed 30 percent of the program funds requested for the project. Exception to the 30 percent requirement may be made if excess general funds are available and good cause is shown.

(c) Nothing herein shall be interpreted to prohibit participation by private transportation companies in demonstration projects through contractual arrangements with the applicant. To the extent intercity bus service is provided under the program, preference shall be given to private bus operators who lawfully have provided rural highway passenger transportation over the routes or within the general area of the demonstration project.

(d) Nothing herein shall be interpreted to prohibit the demonstration period from extending beyond the two fiscal years for which program funds are authorized.

(1) Each proposal and the associated request shall present a fully developed demonstration that does not depend on future program funds completion.

**1.9 Responsibilities.**

(1) Each applicant:

(a) Shall submit a proposal to the appropriate State agency except that Indian tribes on Federal or State reservations may submit proposals directly to the FHWA division office in the field. Twelve (12) copies are requested.

(b) May implement projects under contractual agreements with the State agency.

(c) The State agency or Indian tribe shall:

(1) Forward each proposal received with comments and recommendations, through the FHWA Division Administrator to the FHWA regional office. Ten (10) copies are requested.

(2) For each project selected pursuant to paragraph (d)(1) of this section prior to the obligation of any funds, publish a public notice which shall include the name of the applicant, the area to be served by the proposed undertaking, and adequate description of the proposal, and the date, and place of a public hearing which shall be held within 60 days of publication of the notice within the proposed service area. The public notice shall be published at least two times, one of which shall be at least 30 days prior to the hearing, in a newspaper having general circulation in the vicinity of the proposed undertaking.

(3) The hearing shall be held at a place and time generally convenient for persons affected by the proposed undertaking. Provision shall be made at the hearing for submission of written comments, exhibits, and oral statements. A verbatim written transcript of the oral proceedings at the hearing shall be made and such transcript together with copies of exhibits, copies of the published notice, and written comments, shall be forwarded to the Washington office through the FHWA division office and the FHWA regional office.

(3) Administer projects approved under this part within the State or reservation, respectively.

(4) Enter into an agreement with the FHWA governing each project, and

(5) Make program funds available either directly for State- or tribal implemented projects or through individual contracts with local applicants.

(c) Regional representatives of the FHWA, UMTA, and the Secretary of Transportation will:

(1) Review the applications, recommend not more than ten (10) proposals worthy of demonstration for each region, and transmit seven (7) copies of each recommended proposal to the FHWA Washington office.

(2) Forward one copy of all proposals not recommended to the Washington office, and

(3) Seek the advice and comment of regional representatives of other Federal agencies, including the Departments of Health, Education and Welfare; Labor; Agriculture; and Commerce; and the Office of Economic Opportunity, as appropriate.

(d) The Washington office of the FHWA and UMTA will:

(1) Make a preliminary selection of projects to be funded for FY 1975 from the first-year appropriation of \$9.65 million and any additional amount should a supplemental appropriation be enacted, and from applications to be submitted in FY 1976, based upon the program appropriation for FY 1976, and

(2) Make a final selection of projects to be funded after considering the results of public hearings held for preliminarily selected projects.

**§ 820.11 Content of applications.**

Each application should include as appropriate:

(a) A concise statement of what the project is designed to demonstrate and the expected results and benefits including system provisions to accommodate the elderly and handicapped.

(b) A summary of project activities, including how and where the demonstration will be conducted, changes to be made in existing services, and new services to be provided.

(c) Identification of organizations participating.

(d) Description of the area, available transportation facilities, and proposed transportation improvements.

(e) Data establishing need for the proposed project.

(f) Statements of commitment by agencies or organizations providing or needing transportation to use one areawide service funded by the demonstration.

(g) Commitment of other Federal, State, or local funds or programs to share in the costs of the system.

(h) Summary of project costs and breakdown of funding sources.

(i) Description of how service provided will be monitored and evaluated and how service may be changed as a result of that evaluation, and

(j) Demonstration time schedule and plans for continuation of the service past the demonstration period.

(k) A cover summary sheet containing the name, address, and telephone number of the applicant agency and the contact person responsible for the proposed project; the total amount of Federal demonstration funds being requested under this program divided into capital costs, expenses for development and implementation, project monitoring and evaluation, and operating costs; the amount of funding commitments or participation of other Federal, State, or local programs or contributions; the length of the demonstration phase of the project; and the service area.

[40 FR 16301, Apr. 11, 1975, as amended at 41 FR 3080, Jan. 21, 1976]

#### § 820.13 Project selection criteria.

(a) Emphasis will be on the selection of a range of projects—different sizes, types, and geographical locations.

(b) The following criteria, not necessarily in order of importance, will be applied by the FHWA and UMTA in selecting demonstration projects for implementation.

(1) Innovative features that have potential for nationwide application.

(2) The commitment of local, State, or other Federal programs to participate in the demonstration.

(3) The likelihood of continuation of the project after the expiration of the demonstration.

(4) Provision for the local transportation needs in a realistic and prudent manner.

(5) Quality of proposed monitoring and evaluation along with the ability to modify operations as a result of that evaluation.

(6) Commitment of other local agencies providing or needing transportation services to purchase, share, or use the one areawide service funded for demonstration.

(7) Reasonableness and justification of estimated demand.

(8) Extent to which the proposal recognizes the transportation needs of economically deprived rural people.

(9) Appropriateness of proposed equipment needs, costs, and level of service.

(10) Provisions for service to elderly and handicapped persons.

(11) Compatibility of system with possible existing supplemental operations, e.g., taxicabs, where the vehicles, drivers, radios, and organizations are already available and can provide feeder service.

(12) Extent to which currently operating rural transportation services, manpower, and equipment are utilized.

(13) Degree of management capability to administer the grant and to operate a transportation system.

(14) Suitability of proposed promotion techniques to reach potential riders.

#### § 820.15 Effective utilization by elderly and handicapped persons.

All projects must be planned, designed, constructed, and operated to allow effective utilization by elderly and handicapped persons who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including those who are nonambulatory, wheelchair-users and those with semi-ambulatory capabilities, are unable without special facilities or special planning or design to utilize such facilities and services effectively. Except for compelling reasons shown, in no case may a project including rolling

ock fail to include at least one vehicle which can be effectively utilized by wheelchair-users.

#### 20.17 Civil Rights Act, Title VI responsibilities.

The Rural Highway Public Transportation Demonstration Program all be administered in such a manner as to assure that no person in the United States shall, on the grounds of race, color, sex, or national origin, be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under the program.

FR 3080, Jan. 21, 1976]

#### 20.19 Submission date.

Proposals for FY 1976 shall be sent to the appropriate agency in each State by March 22, 1976.

FR 3080, Jan. 21, 1976]

## PART 825—PUBLIC TRANSPORTATION FOR NONURBANIZED AREAS

### 25.1 Requirements.

a) Section 313 of the Surface Transportation Assistance Act of 1978 (Pub. Law 95-599) amends the Urban Mass Transportation Act of 1964 by adding a new section 18 which institutes a program offering Federal assistance for public transportation in rural and all urban areas by way of a formula grant program to be administered by each State.

b) Each State that applies for funds under the program shall follow the operating procedures set out in Appendix A and B to this section.

#### APPENDIX A—NONURBANIZED AREA PUBLIC TRANSPORTATION PROGRAM OPERATING PROCEDURES

Section 313 of the Surface Transportation Assistance Act of 1978 amended the Urban Mass Transportation Act of 1964 by adding section 18 entitled "Formula Grant Program For Areas Other Than Urbanized." The Section 18 program offers Federal assistance for public transportation in rural and small urban areas by way of a formula grant program to be administered by each State. The goals of this program are to enhance access of people in nonurbanized areas for purposes such as health care,

shopping, education, recreation, public services, and employment by encouraging the maintenance, development, improvement, and use of passenger transportation systems.

The operating procedures that follow are designed to accelerate and simplify the delivery of Federal funds made available by this new program.

#### 1. General Provisions.

a. The Governor of each State (including the Governors of Puerto Rico, American Samoa, Guam, Virgin Islands, the Northern Mariana Islands) shall designate an agency to receive and administer Federal funds under this program. It is strongly encouraged that where there exists a State transportation agency with public transportation responsibility, that agency be the designee.

b. Upon notification of Section 18 fund apportionment, the State may apply immediately to the Federal Highway Administration (FHWA) Division Administrator for the obligation of up to 15 percent of available funds, for administering this program and for providing technical assistance to recipients of these funds. Such technical assistance may include project planning, program development, management development, coordination of public transportation programs (public and private), and such research as the State may deem appropriate to promote effective means of delivering public transportation service in nonurbanized areas. The Federal share for administration and technical assistance expenses shall be 100 percent. Eligible expenses are computed from the date of the Governor's designation.

c. States may receive approval of the request for administration and technical assistance funds (up to 15 percent of State's Section 18 allocation) by submitting Forms PR-2\* and PR-37\* to FHWA Division Administrator.

d. Eligible recipients may include State agencies, local public bodies and agencies thereof, nonprofit organizations, and operators of public transportation services in areas other than urbanized areas.

#### 2. Annual Program of Projects.

a. The State shall submit for FHWA Division Administrator approval an annual program of projects which conforms to the instructions issued under 23 CFR 630 Subpart A (Federal Highway Program Manual\* (FHPM) 6-3-2-2) for the annual program of highway projects. Each Section 18 project should be identified as a separate line item in the annual program submission.

b. At the State's option, the annual program may contain complete project applications, and the State may request FHWA Division Administrator approval of the annual program and authorization of funds for in-

dividual projects that contain the supporting information described in paragraph 3.

c. Amendments to the annual program may occur as needed and submitted to the FHWA Division Administrator for approval.

d. To show compliance with paragraph (b) of Section 18, the State's first annual program of projects submission shall also contain a brief description of/and rationale for the following:

(1) Method of distribution of funds within the State. It is not required that the distribution of funds during this interim period be strictly "fair and equitable." However, over the 4-year period of the legislation, a fair and equitable distribution within the State, including Indian reservations, must be achieved.

(2) Description of how the State designated agency will coordinate the implementation of this program with other appropriate State agencies, particularly social service agencies.

### 3. Project Supporting Information.

a. For each project submitted for FHWA Division Administrator approval, the "Assurances" (Appendix B) shall be executed and included. One executed "Assurances" may be submitted for more than one project, as long as the applicable project numbers are identified on the top of the page.

b. In addition, each project submitted shall contain the following:

(1) Brief project description, including type of public transportation service to be provided and/or assisted and the geographic area of service.

(2) Project coordination accomplished, including:

(a) Description of efforts to coordinate with other transportation providers in the service area, both public and private. A list of all providers must be included.

(b) Description of efforts to coordinate with social service agencies in service area, especially those agencies capable of purchasing service.

(c) Amount and sources of funds used to purchase and operate vehicles in the two previous years, if applicable, and description of efforts to maximize the integration of these funds with funds being applied for under the Section 18 program.

(3) Extent of public involvement in preparing the application as governed by Section 3(d)(1) of the Urban Mass Transportation Act of 1964, as amended, and 23 CFR 820.9(b)(2) (paragraph 6b(2) of FHPM 4-8-4). State "Action Plan" procedures could apply. See 3.c. below.

(4) Description of private enterprise involvement in preparing the application. See paragraph 4.

(5) OMB Circular A-95 clearance or disposition.

(6) Disposition of the labor protection provisions of Section 13(c) of the Urban Mass Transportation Act of 1964, as applicable.

(7) Description of Title VI, Civil Rights Act of 1964, 42 U.S.C. 2000d, and Minority Business Enterprise (MBE) activities. See paragraph 7.

(8) Environmental assessment in accordance with 23 CFR 771 (FHPM 7-7-2). It is anticipated that the typical Section 18 project could be considered a "non-major action," and processed accordingly.

(9) Project budget, including sources of Federal, State, and local funds.

(10) Provisions for the elderly and handicapped. See paragraph 5.

(11) Disposition of 49 CFR 604 and 605 requirements relative to charter and school bus operations, as applicable. See paragraph 6.

c. If any of the above requirements are dealt with in accordance with FHWA approved State procedures, such as Environmental Action Plans 23 CFR 795 (FHPM 7-7-1) and Affirmative Action Plans 23 CFR 200 (Title VI, MBE, FHPM 2-1-2, etc.), then a reference to the approved procedure followed will be satisfactory project documentation.

d. Furthermore, if any of the above support information was previously submitted to FHWA or UMTA for a subsequently approved Section 3 (Urban Mass Transportation Act of 1964) UMTA project or Section 147 (Federal-Aid Highway Act of 1973, P.L. 93-87) FHWA project 23 CFR 820 (FHPM 4-8-4), resubmission of the information, if still current, for a Section 18 application is not required. Project applications should refer to previous submissions for supporting information when at all possible.

4. *Participation of Private Enterprise.* Private transit and paratransit operators shall be allowed to participate in the provision of service to the maximum extent feasible. In order to insure this process, each local project shall fulfill the following requirements.

a. Make a good faith effort to notify all private providers in the service area to inform them of the intended service plan and ascertain whether they could participate in the provision of service.

b. Establish a process by which private providers may have disputes or conflicts arising out of this program properly heard and settled.

### 5. *Elderly and Handicapped Provisions.*

a. Until the U.S. Department of Transportation (DOT) finalizes its regulations relative to nondiscrimination on the basis of handicap (Implementation of Section 504 of the Rehabilitation Act of 1973 (29 USC 794)), the applicant must show progress in accomplishing the following requirements:

m existing elderly and handicapped regu-  
ions.

The needs of elderly and handicapped  
sons, especially wheelchair users and  
i-ambulatory persons, must be addressed  
each applicant. Service must be provided  
these persons which is reasonable by  
parison with the service provided to the  
eral public and which meets a significant  
tion of the actual transportation needs  
such persons within a reasonable time  
iod.

***Charter Bus and School Bus Provisions  
CFR 604 and 605.***

Local projects may not provide charter  
sightseeing services outside their service  
a. Within the service area, charter and  
sightseeing services can only be provided on  
incidental basis. "Incidental" is defined  
those operations which do not interfere  
regular service as proposed in the  
ect application. The following uses are  
umed *not* to be incidental:

) Weekday charters which occur during  
morning and evening rush hours.

) Weekday charters which require vehi-  
to travel more than 50 miles beyond the  
ice area.

) Weekday charters which require the  
of a particular vehicle for more than a  
l of 6 hours in any 1 day.

Local projects may not engage in school  
operations, exclusively for the transpor-  
n of students and school personnel in  
petition with private school bus opera-  
. Vehicles must remain open to the  
lic at all times and be clearly marked for  
lic use.

***Title VI and Minority Business Enter-  
prise Provisions.***

The Section 18 program shall be admin-  
ed in such a manner as to assure that  
persons, or minority business enterprise,  
he State shall, on the grounds of race,  
r, sex, or national origin, be excluded  
n the participation in, be denied the ben-  
s of, or be otherwise subjected to dis-  
mination under this program.

The FHWA Division Administrator  
d assure that all projects pay particular  
ntion to the existence, composition, and  
tribution of minority population groups,  
uding minority business enterprises, in  
project area and shall ensure that the  
onale for providing transportation in the  
ect area is such that service to these  
ups will reflect affirmative compliance  
Title VI of the Civil Rights Act of  
4.

***Other Applicable Regulations and In-  
structions.*** By reference, the provisions of  
following existing regulations and in-  
structions are also applicable to this pro-  
m:

Procedures for Project Applicants.

(1) 23 CFR 820 (FHPM 4-8-4, Rural High-  
way Public Transportation Program, para-  
graphs 3b, 5a, 12c(3)(a), 12c(3)(c), and 13c).

(2) 23 CFR 200 (FHPM 2-1-2 on the Title  
VI, Civil Rights Act of 1964, program).

b. Procedures for the FHWA Division Ad-  
ministrators.

(1) Volume 23, Chapters VI B and VI C of  
the FHWA Administrative Manual\* relative  
to fiscal and accounting procedures are to  
be used by FHWA Regional and Division  
Offices.

(2) The FHWA Federal-Aid Division's Feb-  
ruary 6, 1978, memorandum\* on Program  
Emphasis Areas Red Tape Reduction. Divi-  
sion Administrators are encouraged to apply  
timesaving and abbreviated procedures, as  
described, to this program.

(3) 23 CFR 420 Subpart C (FHPM 4-1-4  
on Program Management and Coordina-  
tion).

***9. Federal and Local Shares of Eligible  
Costs.***

a. The Federal share payable for nonop-  
erating expenses (capital and administra-  
tive) shall not exceed 80 percent of the net  
cost. The Federal share payable for operat-  
ing expenses, as defined by 23 CFR 820.3  
(paragraph 3b FHPM 4-8-4), shall not  
exceed 50 percent of the net operating costs,  
or deficit.

b. Half of the local share for both capital  
and operating expenses must be provided in  
cash, from sources other than Federal funds  
or revenues from the operation of the  
system. The other half of the local share  
may be made up of unrestricted funds from  
other Federal programs.

c. It is both Congressional and U.S. DOT  
intent that monies made available under  
Section 18 augment rather than supplant  
existing transportation resources. States  
should encourage continuation of existing  
funding (both State and local) without im-  
posing a formal "maintenance of effort" re-  
quirement on local applicants.

***10. Project Agreement and Fiscal Proce-  
dures.***

a. The FHWA Division Administrator will  
insure that existing contracts or agreements  
between the State and project applicants  
are modified or new ones prepared as appli-  
cable to reflect new funding levels, new  
matching requirements, etc. (See FHPM 4-  
8-4, paragraph 12c). The FHWA Division  
Administrator, upon program authorization,  
executes the PR-2 project agreement with  
the State and transmits the PR-37 to the  
Office of Fiscal Services.

\*The Federal Highway Program Manual  
and other materials are available for inspec-  
tion and copying as prescribed in 49 CFR  
Part 7, Appendix D.



b. Work type codes for capital and operating expenses will be as applied under paragraph 13c of FHPM 4-8-4. The administrative and technical assistance funds will be coded as work type Y200. Project numbers will be assigned as described in FHWA Administrative Manual, Volume 22, Chapter 5. A statewide number should be assigned to the technical assistance authorization.

#### APPENDIX B—STATE ASSURANCES

##### APPLICATIONS FOR FEDERAL FUNDS UNDER SECTION 18 URBAN MASS TRANSPORTATION ACT OF 1964, AS AMENDED

##### [Federal Project Number —]

To the best of my knowledge, and based on the information submitted in the application recommended for approval, as an authorized representative of (insert name of State designated agency), I make the following assurances to FHWA:

A. The applicant has the requisite fiscal, managerial, and legal capability to carry out the Section 18 program and to receive and disburse Federal funds.

B. Some combination of State, local, and private funding sources has or will be committed to provide the required local share.

C. The applicant organization has or will have by the time of delivery, sufficient funds to operate the vehicles and/or equipment purchased under this project, as applicable.

D. The applicant assures affirmative compliance with Title VI of the Civil Rights Act of 1964 and related statutes.

E. Private transit and paratransit operators have been afforded a fair and timely opportunity to participate to the maximum extent feasible in the provision of the proposed transportation services by the applicant.

F. The needs of elderly and handicapped persons have been addressed by the applicant.

G. The applicant has demonstrated acceptable efforts to achieve coordination with other transportation providers and users, including social service agencies capable of purchasing service.

H. The applicant has complied, as applicable, with the labor protection provisions of the Urban Mass Transportation Act, as amended.

I. The applicant has complied with the applicable provisions of the guidelines relative to charter bus and school bus operations.

J. The applicant has worked to insure the continuation of existing transportation revenues to complement Section 18 funds.

Signature \_\_\_\_\_

Title of authorized official \_\_\_\_\_

Date \_\_\_\_\_

(23 U.S.C. 315; 49 U.S.C. 1601 et seq., (sec. 18) of the Urban Mass Transportation Act of 1964, as amended); 49 CFR 1.48(b) and 1.51(f))

[43 FR 58308, Dec. 13, 1978]

## SUBCHAPTER J—HIGHWAY SAFETY

PART 920—PAVEMENT MARKING  
DEMONSTRATION PROGRAM

- 1 Purpose.
- 3 Objective.
- 5 Eligibility.
- 7 Procedures.
- 9 Standards.
- 11 Reports.

THORITY: 23 U.S.C. 151 and 315; 49 CFR

URCE: 43 FR 18668, May 2, 1978, unless  
otherwise noted.

## 1.1 Purpose.

The purpose of the regulation is to  
forth policies and procedures for  
plementing section 151 of Title 23,  
ted States Code, "Pavement Mark-  
Demonstration Program."

## 1.3 Objective.

The objective of the Pavement  
Marking Demonstration Program is to  
rove the pavement marking of all  
ways and to demonstrate the  
e of such markings in providing  
ter vehicle and pedestrian safety.

## 1.5 Eligibility.

Pavement Marking Demonstration  
gram funds are eligible for expend-  
e on all public highways (except  
estate) and may be used for the  
owing:

- (a) Application of markings on high-  
s which have never been marked,  
upgrading to current standards  
se existing markings which do not  
form to the Manual on Uniform  
ffic Control Devices (MUTCD),<sup>1</sup>
- (b) Restoration of markings on high-  
s previously marked if the previ-  
markings have been substantially  
terated for a sufficient period to  
vide adequate base data for evalua-  
l,
- (c) Renewal of pavement markings  
ed under this program in order to

maintain their effectiveness for a 2-  
year evaluation period,

(d) Installation of materials or de-  
vices having a design life longer than  
conventional paint markings,

(e) Installation of delineators,

(f) Materials, labor, and equipment  
rental or depreciation charges associ-  
ated with the placement of pavement  
markings and delineators under this  
program, and

(g) Surveys of pavement marking  
and delineation needs and the collec-  
tion, analysis, and evaluation of data  
to determine the safety benefits at-  
tributable to this program.

## § 920.7 Procedures.

(a) *Programming.* Pavement marking  
projects shall be included in the Fed-  
eral-aid highway program developed in  
accordance with 23 CFR Part 630,  
Subpart A (Federal-Aid Programs Ap-  
proval and Authorization). The States  
shall give priority to projects on high-  
ways in rural areas.

(b) *Implementation.* Pavement  
marking projects shall be implement-  
ed using normal Federal-aid project  
procedures modified to incorporate  
such timesaving procedures as may be  
developed by the State highway  
agency and the Federal Highway Ad-  
ministration (FHWA) including the  
use of abbreviated plans, grouping of  
projects, and simplified inspection pro-  
cedures. Award of contracts for pave-  
ment marking projects shall be in ac-  
cordance with 23 CFR Part 635.

(c) *Release of funds.* Funds for this  
program may be released by the Fed-  
eral Highway Administrator for other  
safety projects as specified in 23  
U.S.C. 151(f). Funds will not be consid-  
ered for release until all rural public  
highways in the State with an average  
daily traffic volume of 250 vehicles or  
more have been marked with a center-  
line when the paved surface is 16 feet  
(4.88 meters) or wider and marked  
with a center line and edgelines when  
the paved surface is 20 feet (6.10  
meters) or wider. Projects using such  
released funds shall be developed and  
implemented in accordance with 23

<sup>1</sup>The Manual on Uniform Traffic Control  
Devices (Stock Number 5001-0021) may be  
phased from the Superintendent of Doc-  
uments, U.S. Government Printing Office,  
Washington, D.C. 20402.

CFR Part 924 (Highway Safety Improvement Program).

[43 FR 18668, May 2, 1978, as amended at 46 FR 21157, Apr. 9, 1981; 48 FR 44066, Sept. 26, 1983]

§ 920.9 Standards.

Pavement markings or devices placed under this program shall conform to the standards in the Manual on Uniform Traffic Control Devices.<sup>2</sup>

§ 920.11 Reports.

Annually, each State shall submit to the FHWA Division Administrator a report (OMB 04-R2450 and RCS HHS-20-02) on the progress being made in implementing this program and the effectiveness of the improvements made under it. Each State's annual report shall be prepared as follows:

(a) *Content.* The State's report shall include: (1) Data on the progress made in completing the pavement marking demonstration effort. These data shall include current year information on the number of miles marked (center-line and edgeline); railroad-highway grade crossings, pedestrian crossings, and other special area markings completed; and the nature of the work yet to be completed in the program.

(2) An evaluation of the pavement markings placed by comparing accident data for the period following application of the markings with similar data for the period prior to application of the markings. This analysis shall consider the change in number, rate (per million vehicle miles), and severity of accidents, and present a cost-benefit ratio for the improvements accomplished under this program.

(b) *Submission.* The State's report shall be submitted to the FHWA Division Administrator by August 31 of each year until the end of the second year following completion of the total demonstration program in the State.

<sup>2</sup>The Manual on Uniform Traffic Control Devices (Stock Number 5001-0021) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

**PART 922—SAFER OFF-SYSTEM ROADS PROGRAM**

Sec.

922.1 Purpose.

922.3 Definitions.

922.5 Objective.

922.7 Eligibility.

922.9 Distribution of funds.

922.11 Federal share payable.

922.13 Standards.

922.15 Simplified procedures.

**AUTHORITY:** 23 U.S.C. 101(e), 219 and 315; 49 CFR 1.48.

**SOURCE:** 42 FR 28535, June 3, 1977, unless otherwise noted.

§ 922.1 Purpose.

To set forth policies and procedures for implementing section 219 of Title 23, United States Code, as amended, "Safer Off-System Roads."

§ 922.3 Definitions.

(a) "Local road officials", the duly elected or appointed officials of public authorities who are responsible for the construction and maintenance of public road and street systems and whose jurisdictions include off-system roads.

(b) "Maintenance", the preservation of the entire highway including surface, shoulders, roadsides, structures, and such traffic control devices as are necessary for its safe and efficient utilization.

(c) "Off-system road", any toll-free road or street which is not on any Federal-aid system and which is under the jurisdiction of and maintained by a public authority and is open to public travel.

(d) "Open to public travel", except during scheduled periods, extreme weather conditions, or emergencies the road section is passable by four-wheel standard passenger cars and is open to the general public for use without restrictive gates, prohibitive signs, or regulation other than generally applicable traffic control or restrictions based on size, weight, or class of registration.

(e) "Public authority", a Federal authority or a State, county, municipality, town, township, Indian tribe, or other form of local government or

mentality thereof, with the authority to finance, build, operate or maintain toll-free highway facilities.

(b) "Roads and streets", any element normally considered to be a necessary integral part of a highway facility including bridges, tunnels, railroad-highway crossings, drainage structures, traffic control devices, and curbs and other protective structures.

(c) "Roadway", the portion of the highway cross-section, including shoulders, for vehicular use.

(d) "State", any one of the 50 States, District of Columbia, or Puerto Rico.

(e) "State highway department/agency" (SHA), the State highway agency which is legally empowered to administer this program in cooperation with the Federal Highway Administration (FHWA) or such other State agency as may be legally empowered suitably equipped and organized to administer this program, as designated by the governor of the State, as approved by the Federal Highway Administrator.

(f) "Traveled way", the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

## 5 Objective.

The principal objective of the Safer System Roads (SOS) program is to construct, reconstruct, or otherwise improve off-system roads and streets with special emphasis on the implementation of highway safety improvement projects.

R 7656, Feb. 7, 1979]

## 7 Eligibility.

Off-system roads are eligible for improvement under this program.

## 9 Distribution of funds.

Each SHA shall make funds apportioned under this program available throughout the State on a fair equitable basis. Not less than 50 percent of the funds obligated by the State in any fiscal year for this program shall be obligated for highway safety improvement projects. Each SHA shall ensure that projects are se-

lected, designed, and constructed in a manner which will not discriminate against any person or community on the grounds of race, religion, color, national origin, or sex.

(b) In States where the SHA is without legal authority to construct or maintain a project under this program, the SHA shall enter into a formal agreement for construction and/or maintenance of the project with appropriate local road officials or other governmental agencies which do have such legal authority.

[42 FR 28535, June 3, 1977, as amended at 44 FR 7656, Feb. 7, 1979]

## § 922.11 Federal share payable.

The Federal share payable for this program shall be in accordance with the provisions of 23 U.S.C. 120 as they apply to projects on the Federal-aid secondary system.

## § 922.13 Standards.

(a) Design standards for projects implemented under this program shall be:

(1) Those standards, policies, and guides set forth in 23 CFR 625 (Design Standards for Highways), or

(2) Such individual standards, policies, and guides which have been or may be developed by local road officials in cooperation with the SHA and approved by the FHWA.

(b) Within the project limits, or immediately adjacent to a project, no bridge shall remain in place which has a width narrower than the approach roadway unless bridge end protection and approach signing and pavement marking are provided. Except as approved by the FHWA, no bridge shall remain in place which (1) has a width less than the approach traveled way or (2) has a width less than 20 feet on a regular school or commercial bus route.

(c) All projects shall be provided with traffic control devices in accordance with the Manual on Uniform Traffic Control Devices.<sup>1</sup>

<sup>1</sup>For sale by the Superintendent of Documents. U.S. Government Printing Office, Washington, D.C. 20402 (Stock Number 5001-0021). Cited at 23 CFR 625.3(c)(1).

§ 922.15 Simplified procedures.

(a) The FHWA encourages the maximum use of such simplified procedures as may be appropriate for the types of projects which are expected to be implemented under this program. In addition to the guidance provided by 23 CFR 655.506(b) (Highway Safety Improvement Program) the programming of SOS funds may be simplified to eliminate the listing of projects required for a Federal-aid program by 23 CFR 630 Subpart A (Federal-Aid Programs Approval and Authorization). The Federal-aid program submission for utilization of SOS funds may consist of a narrative statement submitted by the SHA and approved by the FHWA, covering the objectives and the planned level of effort for the program period. Authorization to proceed with the work and obligation of funds will be on a project-by-project basis for work identifiable within the approved Federal-aid program.

(b) By agreement between the SHA and the FHWA, projects under this program may be administered in the same manner as certain other Federal-aid projects are administered under the terms of an approved SHA Certification, a Secondary Road Plan agreement pursuant to 23 U.S.C. 117, or such other procedures which are approved.

## PART 924—HIGHWAY SAFETY IMPROVEMENT PROGRAM

Sec.

- 924.1 Purpose.
- 924.3 Definitions.
- 924.5 Policy.
- 924.7 Program structure.
- 924.9 Planning.
- 924.11 Implementation.
- 924.13 Evaluation.
- 924.15 Reporting.

**AUTHORITY:** 23 U.S.C. 105(f), 152, 315, and 402; sec. 203 of the Highway Safety Act of 1973, as amended; 49 CFR 1.48(b).

**SOURCE:** 44 FR 11544, Mar. 1, 1979, unless otherwise noted.

§ 924.1 Purpose.

The purpose of this regulation is to set forth policy for the development and implementation of a comprehensive

highway safety improvement program in each State.

§ 924.3 Definitions.

(a) The term "highway," as used in this regulation, includes in addition those items listed in 23 U.S.C. 101 those facilities specifically provided for the accommodation and protection of pedestrians and bicyclists.

(b) The term "State," as used in this regulation, means any one of the States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands except that, for the purpose of implementing section 203 of the Highway Safety Act of 1973, as amended, "State" means any one of the 50 States, the District of Columbia, and Puerto Rico.

§ 924.5 Policy.

Each State shall develop and implement, on a continuing basis, a highway safety improvement program which has the overall objective of reducing the number and severity of accidents and decreasing the potential for accidents on all highways.

§ 924.7 Program structure.

The highway safety improvement program in each State shall consist of components for planning, implementation, and evaluation of safety programs and projects. These components shall be comprised of processes developed by the States and approved by the Federal Highway Administration (FHWA). Where appropriate, the processes shall be developed cooperatively with officials of the various units of local governments. The processes may incorporate a range of alternate procedures appropriate for the administration of an effective highway safety improvement program on individual highway systems, portions of highway systems and in local political subdivisions, but combined shall cover all public roads in the State.

[48 FR 44066, Sept. 26, 1983]

**9. Planning.**

(a) The planning component of the highway safety improvement program shall incorporate:

(1) A process for collecting and maintaining a record of accident, traffic, and highway data, including, for railroad-highway grade crossings, the characteristics of both highway and railroad traffic;

(2) A process for analyzing available data to identify highway locations, conditions, and elements determined to be hazardous on the basis of accident experience or accident potential;

(3) A process for conducting engineering studies of hazardous locations, conditions, and elements to develop highway safety improvement projects defined in 23 U.S.C. 101(a); and

(4) A process for establishing priorities for implementing highway safety improvement projects, considering:

(i) The potential reduction in the number and/or severity of accidents,

(ii) The cost of the projects and the resources available,

(iii) The relative hazard of public railroad-highway grade crossings based on a hazard index formula,

(iv) Onsite inspection of public grade crossings,

(v) The potential danger to large numbers of people at public grade crossings used on a regular basis by passenger trains, school buses, transit buses, pedestrians, bicyclists, or by trucks and/or motor vehicles carrying hazardous materials, and

(vi) Other criteria as appropriate in each State.

In planning a program of safety improvement projects at railroad-highway grade crossings, special emphasis shall be given to the legislative requirement that all public crossings be provided with standard signing.

The planning component of the highway safety improvement program shall be financed with funds made available through 23 U.S.C. 402, 403, and, where applicable, 104(f).

**11. Implementation.**

(a) The implementation component of the highway safety improvement program in each State shall include a process for scheduling and implementing safety improvement projects in ac-

cordance with (1) the procedures set forth in 23 CFR Part 630, Subpart A (Federal-Aid Program Approval and Project Authorization) and (2) the priorities developed in accordance with § 924.9. The States are encouraged to utilize the timesaving procedures incorporated in FHWA directives for the minor type of work normal to highway safety improvement projects.

(b) Funds apportioned under 23 U.S.C. 152, Hazard Elimination Program, are to be used to implement highway safety improvement projects on any public road other than Interstate.

(c) Funds apportioned under section 203(b) of the Highway Safety Act of 1973, as amended, Railroad-Highway Crossings, are to be used to implement railroad-highway grade crossing safety projects on any public road. At least 50 percent of the funds apportioned under section 203(b) must be made available for the installation of grade crossing protective devices. The railroad share, if any, of the cost of grade crossing improvements shall be determined in accordance with 23 CFR Part 646, Subpart B (Railroad-Highway Projects).

(d) Highway safety improvement projects may be implemented on the Federal-aid system with funds apportioned under 23 U.S.C. 104(b), and with funds apportioned under section 104(b)(1) of the Federal-Aid Highway Act of 1978 and section 103(a) of the Highway Improvement Act of 1982, if in excess to Interstate System needs.

(e) Funds apportioned under 23 U.S.C. 219, Safer Off-System Roads, may be used to implement highway safety improvement projects on public roads which are not on a Federal-aid system.

(f) Major safety defects on bridges, including related approach improvements, may be corrected as part of a bridge rehabilitation project on any public road with funds apportioned under 23 U.S.C. 144, if such project is considered eligible under 23 CFR Part 650, Subpart D (Special Bridge Replacement Program).

(g) Award of contracts for highway safety improvement programs shall be in accordance with 23 CFR Part 635.

[48 FR 44066, Sept. 26, 1983]

**§ 924.13 Evaluation.**

(a) The evaluation component of the highway safety improvement program in each State shall include a process for determining the effect that highway safety improvement projects have in reducing the number and severity of accidents and potential accidents, including:

(1) The cost of, and the safety benefits derived from the various means and methods used to mitigate or eliminate hazards,

(2) A record of accident experience before and after the implementation of a highway safety improvement project, and

(3) A comparison of accident numbers, rates, and severity observed after the implementation of a highway safety improvement project with the accident numbers, rates, and severity expected if the improvement had not been made.

(b) The findings resulting from the evaluation process shall be incorporated as basic source data in the planning process outlined in § 924.9(a).

(c) The evaluation component may be financed with funds made available

through 23 U.S.C. 402, 307(c), and, where applicable, 104(f). In addition, when highway safety improvement projects are undertaken with funds apportioned under 23 U.S.C. 152 and section 203 of the Highway Safety Act of 1973, as amended, these funds may also be used to evaluate the improvements.

**§ 924.15 Reporting.**

(a) Each State shall submit to the FHWA Division Administrator a report later than August 31 of each year (OMB Number 04-R2450) concerning the State's highway safety improvement program during the previous July 1 through June 30 period. In its annual report, the State shall report on the progress made in implementing the hazard elimination program and the grade crossing improvement program, and shall evaluate the effectiveness of completed highway safety improvement projects in these programs.

(b) The preparation of the State annual report may be financed with funds made available through 23 U.S.C. 402, 307(c), and, where applicable, 104(f).

# CHAPTER II—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION AND FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

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## SUBCHAPTER A—[RESERVED]

## SUBCHAPTER B—STANDARDS

|                                                                                          | <i>Page</i> |
|------------------------------------------------------------------------------------------|-------------|
| 4 Uniform standards for State highway safety pro-<br>grams.....                          | 502         |
| 5 Highway safety programs; determinations of ef-<br>fectiveness.....                     | 564         |
| 6 Rules of procedure for invoking sanctions under<br>the Highway Safety Act of 1966..... | 566         |
| 0 Highway safety program standards—applicability<br>to federally administered areas..... | 569         |

## SUBCHAPTER C—GENERAL PROVISIONS

|                                                                                  |     |
|----------------------------------------------------------------------------------|-----|
| 0 Political subdivision participation in State high-<br>way safety programs..... | 570 |
| 1 State highway safety agency.....                                               | 571 |
| 2 State matching of planning and administration<br>costs.....                    | 572 |
| Subject Index.....                                                               | 591 |



## SUBCHAPTER A—[RESERVED]

## SUBCHAPTER B—STANDARDS

### PART 1204—UNIFORM STANDARDS FOR STATE HIGHWAY SAFETY PROGRAMS

#### Subpart A—[Reserved]

#### Subpart B—Standards

#### § 1204.4 Highway Safety Program Stand- ards.

The Uniform Standards for State Highway Safety Programs are set forth in this subpart.

##### HIGHWAY SAFETY PROGRAM STANDARD NUMBERS AND TITLES

- |     |                                                             |
|-----|-------------------------------------------------------------|
| No. |                                                             |
| 1   | Periodic motor vehicle inspection.                          |
| 2   | Motor vehicle registration.                                 |
| 3   | Motorcycle safety.                                          |
| 4   | Driver education.                                           |
| 5   | Drive licensing.                                            |
| 6   | Codes and laws.                                             |
| 7   | Traffic courts.                                             |
| 8   | Alcohol in relation to highway safety.                      |
| 9   | Identification and surveillance of acci-<br>dent locations. |
| 10  | Traffic records.                                            |
| 11  | Emergency medical services.                                 |
| 12  | Highway design, construction and main-<br>tenance.          |
| 13  | Traffic engineering services.                               |
| 14  | Pedestrian safety.                                          |
| 15  | Police traffic services.                                    |
| 16  | Debris hazard control and cleanup.                          |
| 17  | Pupil transportation safety.                                |
| 18  | Accident investigation and reporting.                       |

Supplement A—Highway Safety Program  
Manual—Volume 0—Planning and Admin-  
istration.

Supplement B—Volume 102—Highway  
Safety Plan.

Supplement C—[Reserved]

Supplement D—NHTSA Order 460-4/  
FHWA Order 7510.1—Uniform Adminis-  
trative Requirements for Grants-in-Aid.

Supplement E—NHTSA Order 560-2/  
FHWA Order 7550.1—Environmental  
Impact Review Requirements for Annual  
State and Community Highway Safety  
Work Programs (AWP's).

Supplement F—NHTSA Order 291-1/  
FHWA Order 5-7—Distribution and Re-  
lease of Audit Reports on State Program  
Administration.

Supplement G—NHTSA Order 293-1/  
FHWA Order 5-8—Disposition of External

Audit Findings Related to State and Com-  
munity Highway Safety Program Manag-  
ement.

Supplement H—NHTSA Order 900-4/  
FHWA Order 7-5—Guidelines for the De-  
signation of a State Agency Responsible  
for Highway Safety.

Supplement I—NHTSA Order 462-1/  
FHWA Order 7-8—Use of Section 404  
Funds for Training.

#### HIGHWAY SAFETY PROGRAM STANDARD No. 1

##### PERIODIC MOTOR VEHICLE INSPECTION

Each State shall have a program for  
periodic inspection of all registered ve-  
hicles or other experimental, pilot, or  
demonstration program approved by  
the Secretary, to reduce the number  
of vehicles with existing or potential  
conditions which cause or contribute  
to accidents or increase the severity of  
accidents which do occur, and shall re-  
quire the owner to correct such condi-  
tions.

I. The program shall provide, as a  
minimum, that:

A. Every vehicle registered in the  
State is inspected either at the time of  
initial registration and at least annu-  
ally thereafter, or at such other time as  
may be designated under an experi-  
mental, pilot, or demonstration pro-  
gram approved by the Secretary.

B. The inspection is performed by  
competent personnel specifically  
trained to perform their duties and  
certified by the State.

C. The inspection covers systems and  
subsystems, and components having a  
substantial relation to safe vehicle per-  
formance.

D. The inspection procedures equal to  
or exceed criteria issued or endorsed  
by the National Highway Traffic  
Safety Administration.

E. Each inspection station maintains  
records in a form specified by the  
State, which include at least the fol-  
lowing information:

1. Class of vehicle.
2. Date of inspection.
3. Make of vehicle.

1. Model year.
2. Vehicle identification number.
3. Defects by category.
4. Identification of inspector.
5. Mileage or odometer reading.

2. The State publishes summaries of records of all inspection stations at least annually, including tabulations make and model of vehicle.

1. The program shall be periodically evaluated by the State and the National Highway Traffic Safety Administration shall be provided with an evaluation summary.

#### HIGHWAY SAFETY PROGRAM STANDARD No. 2

##### MOTOR VEHICLE REGISTRATION

Each State shall have a motor vehicle registration program, which shall provide for rapid identification of each vehicle and its owner; and shall make available pertinent data for accident research and safety program development.

The program shall be such that any vehicle operated on public highways is registered and the following information is readily available for each vehicle:

1. Make.
2. Model year.
3. Identification number (rather than motor number).
4. Type of body.
5. License plate number.
6. Name of current owner.
7. Current address of owner.
8. Registered gross laden weight of any commercial vehicle.

Each program shall have a records system that provides at least the following services:

1. Rapid entry of new data into the records or data system.
2. Controls to eliminate unnecessary unreasonable delay in obtaining records.
3. Rapid audio or visual response on receipt at the records station of a priority request for status of vehicle possession authorization.
4. Data available for statistical compilation as needed by authorized agencies.

1. Identification and ownership of vehicle sought for enforcement or other operation needs.

III. This program shall be periodically evaluated by the State, and the National Highway Traffic Safety Administration shall be provided with an evaluation summary.

#### HIGHWAY SAFETY PROGRAM STANDARD No. 3

##### MOTORCYCLE SAFETY

For the purposes of this standard a motorcycle is defined as any motor-driven vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding tractors and vehicles on which the operator and passengers ride within an enclosed cab.

Each State shall have a motorcycle safety program to insure that only persons physically and mentally qualified will be licensed to operate a motorcycle; that protective safety equipment for drivers and passengers will be worn; and that the motorcycle meets standards for safety equipment.

I. The program shall provide as a minimum that:

A. Each person who operates a motorcycle:

1. Passes an examination or reexamination designed especially for motorcycle operation.

2. Holds a license issued specifically for motorcycle use or a regular license endorsed for each purpose.

B. Each motorcycle operator wears an approved safety helmet and eye protection when he is operating his vehicle on streets and highways.

C. Each motorcycle passenger wears an approved safety helmet, and is provided with a seat and footrest.

D. Each motorcycle is equipped with a rear-view mirror.

E. Each motorcycle is inspected at the time it is initially registered and at least annually thereafter, or in accordance with the State's inspection requirements.

II. The program shall be periodically evaluated by the State for its effectiveness in terms of reductions in accidents and their end results, and the National Highway Traffic Safety Administration shall be provided with an evaluation summary.

**HIGHWAY SAFETY PROGRAM STANDARD  
No. 4**

**DRIVER EDUCATION**

Each State, in cooperation with its political subdivisions, shall have a driver education and training program. This program shall provide at least that:

I. There is a driver education program available to all youths of licensing age which:

A. Is taught by instructors certified by the State as qualified for these purposes.

B. Provides each student with practice driving and instruction in at least the following:

1. Basic and advanced driving techniques including techniques for handling emergencies.

2. Rules of the road, and other State laws and local motor vehicle laws and ordinances.

3. Critical vehicle systems and subsystems requiring preventive maintenance.

4. The vehicle, highway and community features:

a. That aid the driver in avoiding crashes,

b. That protect him and his passengers in crashes,

c. That maximize the salvage of the injured.

5. Signs, signals, and highway markings and highway design features which require understanding for safe operation of motor vehicles.

6. Differences in characteristics of urban and rural driving including safe use of modern expressways.

7. Pedestrian safety.

C. Encourages students participating in the program to enroll in first aid training.

II. There is a State research and development program including adequate research, development and procurement of practice driving facilities, simulators, and other similar teaching aids for both school and other driver training use.

III. There is a program for adult driver training and retraining.

IV. Commercial driving schools are licensed and commercial driving instructors are certified in accordance

with specific criteria adopted by the State.

V. The program shall be periodically evaluated by the State, and the National Highway Traffic Safety Administration shall be provided with an evaluation summary.

**HIGHWAY SAFETY PROGRAM STANDARD  
No. 5**

**DRIVER LICENSING**

Each State shall have a driver licensing program: (a) To insure that only persons physically and mentally qualified will be licensed to operate a vehicle on the highways of the State, and (b) to prevent needlessly removing the opportunity of the citizen to drive. The program shall provide, as a minimum, that:

I. Each driver holds only one license which identifies the type(s) of vehicle(s) he is authorized to drive.

II. Each driver submits acceptable proof of date and place of birth in applying for his original license.

III. Each driver:

A. Passes an initial examination demonstrating his:

1. Ability to operate the class(es) of vehicle(s) for which he is licensed.

2. Ability to read and comprehend traffic signs and symbols.

3. Knowledge of laws relating to traffic (rules of the road) safe driving procedures, vehicle and highway safety features, emergency situations that arise in the operation of an automobile, and other driver responsibilities.

4. Visual acuity, which must meet or exceed State standards.

B. Is reexamined at an interval not to exceed 4 years, for at least visual acuity and knowledge of rules of the road.

IV. A record on each driver is maintained which includes positive identification, current address, and driving history. In addition, the record system shall provide the following services:

A. Rapid entry of new data into the system.

B. Controls to eliminate unnecessary or unreasonable delay in obtaining data which is required for the system.

C. Rapid audio or visual response upon receipt at the records station of any priority request for status of driver license validity.

D. Ready availability of data for statistical compilation as needed by authorized sources.

E. Ready identification of drivers sought for enforcement or other operational needs.

V. Each license is issued for a specific term, and must be renewed to remain valid. At time of issuance or renewal each driver's record must be checked.

VI. There is a driver improvement program to identify problem drivers for record review and other appropriate actions designed to reduce the frequency of their involvement in traffic accidents or violations.

VII. There is:

1. A system providing for medical evaluation of persons whom the driver licensing agency has reason to believe have mental or physical conditions which might impair their driving ability.

2. A procedure which will keep the driver license agency informed of all licensed drivers who are currently applying for or receiving any type of tax, license or other benefits or exemptions for the blind or nearly blind.

3. A medical advisory board or equivalent allied health professional committee composed of qualified personnel to advise the driver license agency on medical criteria and vision standards.

VIII. The program shall be periodically evaluated by the State and the National Highway Traffic Safety Administration shall be provided with an evaluation summary. The evaluation shall attempt to ascertain the extent to which driving without a license occurs.

#### HIGHWAY SAFETY PROGRAM STANDARD No. 6

##### CODES AND LAWS

Each State shall develop and implement a program to achieve uniformity in traffic codes and laws throughout the State. The program shall provide at least that:

I. There is a plan to achieve uniform rules of the road in all of its jurisdictions.

II. There is a plan to make the State's unified rules of the road consistent with similar unified plans of other States. Toward this end, each State shall undertake and maintain continuing comparisons of all State and local laws, statutes and ordinances with the comparable provisions of the Rules of the Road section of the Uniform Vehicle Code.

#### HIGHWAY SAFETY PROGRAM STANDARD No. 7

##### TRAFFIC COURTS

Each State in cooperation with its political subdivisions shall have a program to assure that all traffic courts in it complement and support local and statewide traffic safety objectives. The program shall provide at least that:

I. All convictions for moving traffic violations shall be reported to the State traffic records system.

II. Program Recommendations.

In addition the State should take appropriate steps to meet the following recommended conditions:

A. All individuals charged with moving hazardous traffic violations are required to appear in court.

B. Traffic courts are financially independent of any fee system, fines, costs, or other revenue such as posting or forfeiture of bail or other collateral resulting from processing violations of motor-vehicle laws.

C. Operating procedures, assignment of judges, staff and quarters insure reasonable availability of court services for alleged traffic offenders.

D. There is a uniform accounting system regarding traffic violation notices, collection of fines, fees and costs.

E. There are uniform rules governing court procedures in traffic cases.

F. There are current manuals and guides for administration, court procedures, and accounting.

**HIGHWAY SAFETY PROGRAM STANDARD  
No. 8**

**ALCOHOL IN RELATION TO HIGHWAY  
SAFETY**

Each State, in cooperation with its political subdivisions, shall develop and implement a program to achieve a reduction in those traffic accidents arising in whole or in part from persons driving under the influence of alcohol. The program shall provide at least that:

I. There is a specification by the State of the following with respect to alcohol related offenses:

A. Chemical test procedures for determining blood-alcohol concentrations.

B. (1) The blood-alcohol concentrations, not higher than .10 percent by weight, which define the terms "intoxicated" or "under the influence of alcohol," and

(2) A provision making it either unlawful, or presumptive evidence of illegality, if the blood-alcohol concentration of a driver equals or exceeds the limit so established.

II. Any person placed under arrest for operating a motor vehicle while intoxicated or under the influence of alcohol is deemed to have given his consent to a chemical test of his blood, breath, or urine for the purpose of determining the alcohol content of his blood.

III. To the extent practicable, there are quantitative tests for alcohol:

A. On the bodies of all drivers and adult pedestrians who die within 4 hours of a traffic accident.

B. On all surviving drivers in accidents fatal to others.

IV. There are appropriate procedures established by the State for specifying:

A. The qualifications of personnel who administer chemical tests used to determine blood, breath, and other body alcohol concentrations.

B. The methods and related details of specimen selection, collection, handling, and analysis.

C. The reporting and tabulation of the results.

V. The program shall be periodically evaluated by the State, and the National Highway Traffic Safety Admin-

istration shall be provided with an evaluation summary.

**HIGHWAY SAFETY PROGRAM STANDARD  
No. 9**

**IDENTIFICATION AND SURVEILLANCE OF  
ACCIDENT LOCATIONS**

Each State, in cooperation with county and other local governments, shall have a program for identifying accident locations and for maintaining surveillance of those locations having high accident rates or losses.

I. The program shall provide, as minimum, that:

A. There is a procedure for accurate identification of accident locations of all roads and streets.

1. To identify accident experience and losses on any specific sections of the road and street system.

2. To produce an inventory of:

a. High accident locations.

b. Locations where accidents are increasing sharply.

c. Design and operating features with which high accident frequencies or severities are associated.

3. To take appropriate measures for reducing accidents.

4. To evaluate the effectiveness of safety improvements on any specific section of the road and street system.

B. There is a systematically organized program:

1. To maintain continuing surveillance of the roadway network for potentially high accident locations.

2. To develop methods for their correction.

II. The program shall be periodically evaluated by the State and the Federal Highway Administration shall be provided with an evaluation summary.

**HIGHWAY SAFETY PROGRAM STANDARD  
No. 10**

**TRAFFIC RECORDS**

Each State, in cooperation with its political subdivisions, shall maintain a traffic records system. The Statewide system (which may consist of compatible subsystems) shall include data for the entire State. Information regarding drivers, vehicles, accidents, and highways shall be compatible for pur-

ses of analysis and correlation. Systems maintained by local governments shall be compatible with, and capable of furnishing data to the State system. The State system shall be capable of providing summaries, tabulations and special analyses to local governments upon request.

The record system shall include: (a) certain basic minimum data and (b) procedures for statistical analyses of the data.

The program shall provide as a minimum that:

Information on vehicles and system capabilities includes (conforms to Motor Vehicle Registration standards):

- Make.
- Model year.
- Identification number (rather than motor number).
- Type of body.
- License plate number.
- Name of current owner.
- Current address of owner.
- Registered gross laden weight of commercial vehicle.
- Rapid entry of new data into the records or data system.
- Controls to eliminate unnecessary unreasonable delay in obtaining records.

• Rapid audio or visual response on receipt at the records station of priority request for status of vehicle possession authorization.

• Data available for statistical compilation as needed by authorized agencies.

• Identification and ownership of vehicles sought for enforcement or other operational needs.

• Information on drivers and system capabilities includes (conforms to Driver Licensing standard):

- Positive identification.
- Current address.
- Driving history.
- Rapid entry of new data into the system.
- Controls to eliminate unnecessary unreasonable delay in obtaining records which is required for the system.
- Rapid audio or visual response on receipt at the records station of priority request for status of driver license validity.

G. Ready availability of data for statistical compilation as needed by authorized sources.

H. Ready identification of drivers sought for enforcement or other operational needs.

III. Information on types of accidents includes:

A. Identification of location in space and time.

B. Identification of drivers and vehicles involved.

C. Type of accident.

D. Description of injury and property damage.

E. Description of environmental conditions.

F. Causes and contributing factors, including the absence of or failure to use available safety equipment.

IV. There are methods to develop summary listings, cross tabulations, trend analyses and other statistical treatments of all appropriate combinations and aggregations of data items in the basic minimum data record of drivers and accident and accident experience by specified groups.

V. All traffic records relating to accidents collected hereunder shall be open to the public in a manner which does not identify individuals.

VI. The program shall be periodically evaluated by the State and the National Highway Traffic Safety Administration shall be provided with an evaluation summary.

## HIGHWAY SAFETY PROGRAM STANDARD No. 11

### EMERGENCY MEDICAL SERVICES

Each State, in cooperation with its local political subdivisions, shall have a program to ensure that persons involved in highway accidents receive prompt emergency medical care under the range of emergency conditions encountered. The program shall provide, as a minimum, that:

I. There are training, licensing, and related requirements (as appropriate) for ambulance and rescue vehicle operators, attendants, drivers, and dispatchers.

II. There are requirements for types and number of emergency vehicles in-

cluding supplies and equipment to be carried.

III. There are requirements for the operation and coordination of ambulances and other emergency care systems.

IV. There are first aid training programs and refresher courses for emergency service personnel, and the general public is encouraged to take first aid courses.

V. There are criteria for the use of two-way communications.

VI. There are procedures for summoning and dispatching aid.

VII. There is an up-to-date, comprehensive plan for emergency medical services, including:

A. Facilities and equipment.

B. Definition of areas of responsibility.

C. Agreements for mutual support.

D. Communications systems.

VIII. This program shall be periodically evaluated by the State and the National Highway Traffic Safety Administration shall be provided with an evaluation summary.

#### HIGHWAY SAFETY PROGRAM STANDARD No. 12

##### HIGHWAY DESIGN, CONSTRUCTION AND MAINTENANCE

Every State in cooperation with county and local governments shall have a program of highway design, construction, and maintenance to improve highway safety. Standards applicable to specific programs are those issued or endorsed by the Federal Highway Administrator.

I. The program shall provide, as a minimum that:

A. There are design standards relating to safety features such as sight distance, horizontal and vertical curvature, spacing of decision points, width of lanes, etc., for all new construction or reconstruction, at least on expressways, major streets and highways, and through streets and highways.

B. Street systems are designated to provide a safe traffic environment for pedestrians and motorists when subdivisions and residential areas are developed or redeveloped.

C. Roadway lighting is provided or upgraded on a priority basis at the following locations:

1. Expressways and other major arterials in urbanized areas.

2. Junctions of major highways in rural areas.

3. Locations or sections of streets and highways having high ratios of night-to-day motor vehicle and/or pedestrian accidents.

4. Tunnels and long underpasses.

D. There are standards for pavement design and construction with specific provisions for high skid resistant qualities.

E. There is a program for resurfacing or other surface treatment with emphasis on correction of locations of sections of streets and highways with low skid resistance and high or potentially high accident rates susceptible to reduction by providing improved surfaces.

F. There is guidance, warning and regulation of traffic approaching and traveling over construction or repair sites and detours.

G. There is a systematic identification and tabulation of all rail-highway grade crossings and a program for the elimination of hazards and dangerous crossings.

H. Roadways and the roadides are maintained consistent with the design standards which are followed in construction, to provide safe and efficient movement of traffic.

I. Hazards within the highway right-of-way are identified and corrected.

J. There are highway design and construction features wherever possible for accident prevention and survivability including at least the following:

1. Roadsides clear of obstacles, with clear distance being determined on the basis of traffic volumes, prevailing speeds, and the nature of development along the street or highway.

2. Supports for traffic control devices and lighting that are designed to yield or break away under impact wherever appropriate.

3. Protective devices that afford maximum protection to the occupants of vehicles wherever fixed objects cannot reasonably be removed or designed to yield.

4. Bridge railings and parapets which are designed to minimize severity of impact, to retain the vehicle, to redirect the vehicle so that it will move parallel to the roadway, and to minimize danger to traffic below.

5. Guardrails, and other design features which protect people from out-of-control vehicles at locations of special hazard such as playgrounds, schoolyards and commercial areas.

K. There is a post-crash program which includes at least the following:

1. Signs at freeway interchanges directing motorists to hospitals having emergency care capabilities.

2. Maintenance personnel trained in procedures for summoning aid, protecting others from hazards at accident sites, and removing debris.

3. Provisions for access and egress for emergency vehicles to freeway sections where this would significantly reduce travel time without reducing the safety benefits of access control.

II. This program shall be periodically evaluated by the State for its effectiveness in terms of reductions in accidents and their end results, and the Federal Highway Administration shall be provided with an evaluation summary.

#### HIGHWAY SAFETY PROGRAM STANDARD No. 13

##### TRAFFIC ENGINEERING SERVICES

Each State, in cooperation with its political subdivisions, and each Federal department or agency which controls highways open to public travel or supervises traffic operations, shall have a program for applying traffic engineering measures and techniques, including the use of traffic control devices, to reduce the number and severity of traffic accidents.

I. The program as a minimum shall consist of:

A. A comprehensive manpower development plan to provide the necessary traffic engineering capability, including:

1. Provisions for supplying traffic engineering assistance to those jurisdictions unable to justify a full-time traffic engineering staff.

2. Provisions for upgrading the skills of practicing traffic engineers, and

providing basic instruction in traffic engineering techniques to subprofessionals and technicians.

B. Utilization of traffic engineering principles and expertise in the planning, design, construction, and maintenance of the public roadways, and in the application of traffic control devices.

C. A traffic control devices plan including:

1. An inventory of all traffic control devices.

2. Periodic review of existing traffic control devices, including a systematic upgrading of standard devices to conform with standards issued or endorsed by the Federal Highway Administrator.

3. A maintenance schedule adequate to insure proper operation and timely repair of control devices, including daytime and nighttime inspections.

4. Where appropriate, the application and evaluation of new ideas and concepts in applying control devices and in the modification of existing devices to improve their effectiveness through controlled experimentation.

D. An implementation schedule to utilize traffic engineering manpower to:

1. Review road projects during the planning, design, and construction stages to detect and correct features that may lead to operational safety difficulties.

2. Install safety-related improvements as a part of routine maintenance and/or repair activities.

3. Correct conditions noted during routine operational surveillance of the roadway system to rapidly adjust for the changes in traffic and road characteristics as a means of reducing accident frequency or severity.

4. Conduct traffic engineering analyses of all high accident locations and development of corrective measures.

5. Analyze potentially hazardous locations, such as sharp curves, steep grades, and railroad grade crossings and develop appropriate countermeasures.

6. Identify traffic control needs and determine short and long range requirements.

7. Evaluate the effectiveness of specific traffic control measures in reduc-



ing the frequency and severity of traffic accidents.

8. Conduct traffic engineering studies to establish traffic regulations such as fixed or variable speed limits.

II. This Program shall be periodically evaluated by the State, or appropriate Federal department or agency where applicable, and the Federal Highway Administration shall be provided with an evaluation summary.

# HIGHWAY SAFETY PROGRAM STANDARD No. 14

## PEDESTRIAN SAFETY

Every State in cooperation with its political subdivisions shall develop and implement a program to insure the safety of pedestrians of all ages. The program shall provide, as a minimum, that:

I. There is a continuing statewide inventory of pedestrian-motor vehicle accidents, identifying specifically:

A. The locations and times of all such accidents.

B. The age of all of the pedestrians injured or killed.

C. Where feasible, to determine whether the exterior features of the vehicle produced or aggravated an injury.

D. The color and shade of clothing worn by pedestrians when injured or killed, and the visibility conditions which prevailed at the time.

E. The extent to which alcohol is present in the blood of fatally injured pedestrians 16 years of age and older.

F. Where possible, to determine, the extent to which pedestrians involved in accidents have physical or mental disabilities.

II. There are established Statewide operational procedures for improving the protection of pedestrians through reduction of potential conflicts with vehicles:

A. By application of traffic engineering practices including pedestrian signals, signs, markings, parking regulations, and other pedestrian and vehicle traffic control devices.

B. By land-use planning in new and redevelopment areas for safe pedestrian movement.

C. By provision of pedestrian bridges, barriers, sidewalks and other

means of physically separating pedestrian and vehicle pathways.

D. By provision of environmental illumination at high pedestrian volume and/or potentially hazardous pedestrian crossings.

III. There is established a Statewide program for familiarizing drivers with the pedestrian problem and with ways to avoid pedestrian collisions.

A. The program content shall include emphasis on:

(1) Behavior characteristics of the three types of pedestrians most commonly involved in accidents with vehicles: (i) Children; (ii) persons under the influence of alcohol; (iii) the elderly;

(2) Accident avoidance techniques that take into account the hazardous conditions, and behavior characteristics displayed by each of the three high risk pedestrian groups listed in subparagraph (1).

B. Emphasis on this program content shall be included in:

(1) All driver education and training courses;

(2) Driver improvement courses; and

(3) Driver license examinations.

IV. There are statewide programs for training and educating all members of the public as to safe pedestrian behavior on or near the streets and highways.

A. For children, youths and adults enrolled in schools, beginning at the earliest possible age.

B. For the general population via the public media.

V. There is a statewide program for the protection of children walking to and from school, entering and leaving school buses, and in neighborhood play.

VI. There is a statewide program for establishment and enforcement of traffic regulations designed to achieve orderly pedestrian and vehicle movement and to reduce vehicle-pedestrian conflicts.

VII. This program shall be periodically evaluated by the States, and the National Highway Traffic Safety Administration and the Federal Highway Administration shall be provided with an evaluation summary.

# HIGHWAY SAFETY PROGRAM STANDARD No. 15

## POLICE TRAFFIC SERVICES

Every State in cooperation with its political subdivisions shall have a program to insure efficient and effective police services utilizing traffic patrols; to enforce traffic laws; to prevent accidents; to aid the injured; to document the particulars of individual accidents; to supervise accident cleanup; to restore safe and orderly traffic movement.

The program shall provide as a minimum that there are:

1. Uniform training procedures in aspects for police supervision of vehicular and pedestrian traffic related to highway safety, including use of appropriate instructional materials and techniques for recruit, advanced, in-service, and special course training.

2. Periodic in-service training courses for uniformed and other police department employees assigned to traffic duties dealing with:

a. Administration and management of police, vehicular and pedestrian traffic services.

b. Analysis, interpretation and use of traffic records data.

c. Insurance of prompt reliable postaccident response, including medical aid to the injured.

d. Accomplishing postaccident responsibilities.

3. Procedures for the selective assignment of trained police personnel to supervise vehicular and pedestrian traffic duties including enforcement of controls in hazardous or congested areas based on: time and location of

a. Traffic volume.

b. Accident experience.

c. Traffic violation frequency.

d. Emergency and service needs.

4. Procedures for investigating, recording and reporting accidents pertaining to:

a. The human, vehicular, and highway causative factors in individual accidents.

b. The human, vehicular, and highway causative factors of injuries and deaths, including failure to use safety devices.

c. The efficiency of the postaccident response.

E. Procedures for recognizing and reporting, to the appropriate agencies hazardous highway defects and conditions, including:

(1) Condition of drivers;

(2) Operational condition of motor vehicles;

(3) Defective signs, signals, controls, construction and maintenance deficiencies.

a. Data listed in (3) above shall be readily available to the public.

F. Appropriate agreements by the State and its political subdivisions regarding primary responsibility and authority for police traffic supervision, and cooperative responsibilities where concurrent jurisdictional boundaries and problems exist, and appropriate participation of each law enforcement agency in the comprehensive highway safety program of the State and its political subdivisions.

II. The programs shall be periodically evaluated by the State, and the National Highway Traffic Safety Administration shall be provided with an evaluation summary.

III. Nothing in this standard shall preclude the use of personnel other than police officers in carrying out the minimum requirements in accordance with laws and policies established by State and/or local governments.

## HIGHWAY SAFETY PROGRAM STANDARD No. 16

### DEBRIS HAZARD CONTROL AND CLEANUP

Each State in cooperation with its political subdivisions shall have a program which provides for rapid, orderly, and safe removal from the roadway of wreckage, spillage, and debris resulting from motor vehicle accidents, and for otherwise reducing the likelihood of secondary and chain-reaction collisions, and conditions hazardous to the public health and safety.

I. The program shall provide as a minimum that:

A. Operational procedures are established and implemented for:

(1) Enabling rescue and salvage equipment personnel to get to the scene of accidents rapidly and to operate effectively on arrival:

a. On heavily traveled freeways and other limited access roads;

b. In other types of locations where wreckage or spillage of hazardous materials on or adjacent to highways endangers the public health and safety;

(2) Extricating trapped persons from wreckage with reasonable care—both to avoid injury or aggravating existing injuries;

(3) Warning approaching drivers and detouring them with reasonable care past hazardous wreckage or spillage;

(4) Safe handling of spillage or potential spillage of materials that are:

- a. Radioactive
- b. Flammable
- c. Poisonous
- d. Explosive
- e. Otherwise hazardous.

(5) Removing wreckage or spillage from roadways or otherwise causing the resumption of safe, orderly traffic flow.

B. Adequate numbers of rescue and salvage personnel are properly trained and retrained in the latest accident cleanup techniques.

C. A communications system is provided, adequately equipped and manned, to provide coordinated effort in incident detection, and the notification, dispatch, and response of appropriate services.

II. The program shall be periodically evaluated by the State, and the National Highway Traffic Safety Administration shall be provided with an evaluation summary.

## HIGHWAY SAFETY PROGRAM STANDARD No. 17

### PUPIL TRANSPORTATION SAFETY

I. *Scope.* This standard establishes minimum requirements for a State highway safety program for pupil transportation safety; including the identification, operation, and maintenance of schoolbuses; training of personnel; and administration.

II. *Purpose.* The purpose of this standard is to reduce, to the greatest extent possible, the danger of death or injury to schoolchildren while they are being transported to and from school.

III. *Definitions.* "Type I school vehicle" means any motor vehicle with

motive power, except a trailer, used to carry more than 16 pupils to and from school. This definition includes vehicles that are at any time used to carry schoolchildren and school personnel exclusively, and does not include vehicles that only carry schoolchildren along with other passengers as part of the operations of a common carrier.

"Type II school vehicle" means a motor vehicle used to carry 16 or less pupils to or from school. This does not include private motor vehicles used to carry members of the owner's household.

IV. *Requirements.* Each State, in cooperation with its school districts and its political subdivisions, shall have comprehensive pupil transportation safety program to assure that school vehicles are operated and maintained so as to achieve the highest possible level of safety.

A. *Administration.* 1. There shall be a single State agency having primary administrative responsibility for pupil transportation, and employing at least one full-time professional to carry out its responsibilities for pupil transportation.

2. The responsible State agency shall develop an operating system for collecting and reporting information needed to improve the safety of school vehicle operations, in accordance with Safety Program Standard No. 1 "Traffic Records," § 204.4.

B. *Identification and equipment of school vehicles.* Each State shall establish and maintain compliance with the following requirements for identification and equipment of school vehicles. The use of stop arms is at the option of the State.

1. Type I school vehicles shall:

a. Be identified with the words "School Bus," printed in letters not less than 8 inches high, located between the warning signal lamps as high as possible without impairing visibility of the lettering from both front and rear, and have no other lettering on the front or rear of the vehicle;

b. Be painted National School Bus Glossy Yellow, in accordance with the colorimetric specification of Federal Standard No. 595a, Color 13432, except that the hood shall be either that color or lusterless black, matching

Federal Standard No. 595a, Color 17038;

2. Have bumpers of glossy black, matching Federal Standard No. 595a, color 17038; unless, for increased night visibility, they are covered with retroreflective material;

3. Be equipped with a system of signal lamps that conforms to the schoolbus requirements of Federal Motor Vehicle Safety Standard 108, 49 CFR 571.21; and

4. Have a system of mirrors that will enable the seated driver a view of the roadway to each side of the bus, and the area immediately in front of the front bumper, in accordance with the following procedure:

When a rod, 30 inches long, is placed upright on the ground at any point along a traverse line 1 foot forward of the forwardmost point of a school bus, the rod extending the width of the bus, at least 7½ inches of the length of the rod shall be visible to the driver, either by direct view or by means of an indirect visibility system.

5. Type I school vehicles that are operated by a privately or publicly owned local transit system, and used for regular common carrier transit service as well as special school transit service, shall meet all of the requirements of this standard, except as follows:

a. Such vehicles need not be painted yellow and black as required by paragraphs 1(b) and 1(c) of this section.

b. In lieu of the requirements of paragraph 1(a) of this section, such vehicles shall, while transporting children to and from school, be equipped with temporary signs, located conspicuously on the front and back of the vehicle. The sign on the front shall have the words "School Bus" printed in black letters not less than 6 in high, on a background of national school bus glossy yellow, as specified in paragraph 1(b) of this section. The sign on the rear shall be at least 10 ft² in size and shall be painted national school bus glossy yellow, as specified in paragraph 1(b) of this section, and shall have the words "School Bus" printed in black letters not less than 8 in high. The 6-in and 8-in letters shall be in the "D" as specified in the Stand-

ard Alphabets—Federal Highway Administration, 1966.

c. Where such vehicles are used only in places where use of warning signal lamps is prohibited, they need not be equipped with the signal lamps required by paragraph 1(d) of this section.

3. Any school vehicle meeting the identification requirements of 1.a-d above that is permanently converted for use wholly for purposes other than transporting pupils to or from school shall be painted a color other than National School Bus Glossy Yellow, and shall have the stop arms, and equipment required by section IV.B.1.d, removed.

4. Type I school vehicles being operated on a public highway and transporting primarily passengers other than school pupils shall have the words, "School Bus," covered, removed, or otherwise concealed, and the stop arms and equipment required by section IV.B.1.d shall not be operable through the usual controls.

5.a. Type II school vehicles shall either:

(1) Comply with all the requirements for Type I school vehicles; or

(2) Be of a color other than National School Bus Glossy Yellow, have none of the equipment specified in IV.B.1.d, and not have the words, "School Bus," in any location on the exterior of the vehicle, or in any interior location visible to a motorist.

b. The State shall establish conditions under which one or the other of the above two specifications for Type II vehicles shall apply.

C. *Operation.* Each State shall establish and maintain compliance with the following requirements for operating school vehicles:

1. *Personnel.* a. Each State shall develop a plan for selecting, training, and supervising persons whose primary duties involve transporting school pupils, in order to assure that such persons will attain a high degree of competence in, and knowledge of, their duties.

b. Every person who drives a Type I or Type II school vehicle occupied by school pupils shall, as a minimum:

(1) Have a valid State driver's license to operate such a vehicle(s);

(2) Meet all special physical, mental, and moral requirements established by the State agency having primary responsibility for pupil transportation; and

(3) Be qualified as a driver under the Motor Carrier Safety Regulations of the Federal Highway Administration 49 CFR 391, if he or his employer is subject to those regulations.

2. *Pupil instruction.* At least twice during each school year, each pupil who is transported in a school vehicle shall be instructed in safe riding practices, and participate in emergency evacuation drills.

3. *Vehicle operation.* a. Each State shall develop plans for minimizing highway use hazards to school vehicle occupants, other highway users, pedestrians, and property, including but not limited to:

(1) Careful planning and annual review of routes for safety hazards;

(2) Planning routes to assure maximum use of buses, and avoid standees;

(3) Providing loading and unloading zones off the main traveled part of highways, whenever it is practicable to do so;

(4) Establishing restricted loading and unloading areas for school buses at, or near schools;

(5) Requiring the driver of a vehicle meeting or overtaking a schoolbus that is stopped on a highway to take on or discharge pupils, and on which the red warning signals specified in IV.B.1.d are in operation, to stop his vehicle before it reaches the school bus and not proceed until the warning signals are deactivated; and

(6) Prohibiting, by legislation or regulation, operation of any vehicle displaying the words, "School Bus," unless it meets the equipment and identification requirements of this standard.

b. Use of flashing warning signal lamps while loading or unloading pupils shall be at the option of the State. Use of red warning signal lamps for any other purpose, and at any time other than when the school vehicle is stopped to load or discharge passengers shall be prohibited.

c. When vehicles are equipped with stop arms, such devices shall be oper-

ated only in conjunction with red signal lamps.

d. *Seating.* (1) Seating shall be provided that will permit each occupant to sit in a seat in a plan view lateral location, intended by the manufacturer to provide seating accommodation for a person at least as large as a 5th percentile adult female, as defined in 49 CFR 571.3.

(2) Bus routing and seating plans shall be coordinated so as to eliminate standees when a school vehicle is in motion.

(3) There shall be no auxiliary seating accommodations such as temporary or folding jump seats in school vehicles.

(4) Drivers of school vehicles equipped with lap belts shall be required to wear them whenever the vehicle is in motion.

(5) Passengers in Type II school vehicles equipped with lap belts shall be required to wear them whenever the vehicle is in motion.

D. *Vehicle maintenance.* Each State shall establish and maintain compliance with the following requirements for vehicle maintenance:

1. School vehicles shall be maintained in safe operating condition through a systematic preventive maintenance program.

2. All school vehicles shall be inspected at least semiannually, in accordance with Highway Safety Program Manual Vol. 1, published by the Department of Transportation January 1969. School vehicles subject to the Motor Carrier Safety Regulations of the Federal Highway Administration shall be inspected and maintained in accordance with those regulations (49 CFR Parts 393 and 396).

3. School vehicle drivers shall be required to perform daily pretrip inspections of their vehicles, and to report promptly and in writing any defects or deficiencies discovered that may affect the safety of the vehicle's operation or result in its mechanical breakdown. Pretrip inspection and condition reports for school vehicles subject to the Motor Carrier Safety Regulations of the Federal Highway Administration shall be performed in accordance with those regulations (49 CFR §§ 392.7, 392.8, and 396.7).

**V. Program evaluation.** The pupil transportation safety program shall be evaluated at least annually by the State agency having primary administrative responsibility for pupil transportation. The National Highway Traffic Safety Administration shall be furnished a summary of each evaluation.

**SUMMARY OF COMMENTS AND RECOMMENDATIONS MADE BY THE NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE ON THE PUPIL TRANSPORTATION SAFETY STANDARD**

As required by statute, the National Highway Safety Advisory Committee reviewed the draft Pupil Transportation Safety Standard and made comments and recommendations to the Secretary of Transportation in May and November 1970, summarized as follows:

The Committee recommended that the standard be issued initially to cover "pupil transportation safety" and that the standard should be extended in the future to cover all child transportation not under the jurisdiction of the Department of Transportation's Bureau of Motor Carrier Safety.

The Committee favored a "no undee" provision.

The Committee supported the uniform warning system for schoolbuses but recommended that warning systems (flashing lights) to control traffic should not be limited to larger buses (Type I vehicles).

To allow the use of highly reflective colors to ward off excessive solar radiation, the Committee recommended that schoolbus roofs be permitted to be some color other than schoolbus yellow. The Committee also recommended the deletion of the provisions requiring bumpers to be painted "lossy black" to allow the use of rubber or other innovative bumper designs not susceptible to being painted. Because of the inadequate and incompatible seat and body structure designs of schoolbuses, the Committee proved the omission of seat belts for passengers. The Committee also recommended that passengers in Type II vehicles be required to use belts only if equipped.

6. The Committee recommended that monitors or proctors be required on each schoolbus to aid in loading and unloading the bus and to free the driver from tending the passengers while driving.

7. The Committee favored a provision in the standard calling for the periodic reevaluation or requalification of schoolbus drivers.

8. To allow States more flexibility in vehicle inspection programs, the Committee recommended that schoolbuses be inspected "periodically" rather than "semiannually."

**HIGHWAY SAFETY PROGRAM STANDARD  
No. 18**

**ACCIDENT INVESTIGATION AND REPORTING**

**I. Scope.** This standard establishes minimum requirements for a State highway safety program for accident investigation and reporting.

**II. Purpose.** The purpose of this standard is to establish a uniform, comprehensive motor vehicle traffic accident investigation program for gathering information—who, what, when, where, why, and how—on motor vehicle traffic accidents and associated deaths, injuries, and property damage; and entering the information into the traffic records system for use in planning, evaluating, and furthering highway safety program goals.

**III. Definitions.** For the purpose of this standard the following definitions apply:

**Accident**—an unintended event resulting in injury or damage, involving one or more motor vehicles on a highway that is publicly maintained and open to the public for vehicular travel.

**Highway**—the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

**Motor vehicle**—any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails.

**IV. Requirements.** Each State, in cooperation with its political subdivisions, shall have an accident investiga-

tion program meeting the requirements established herein.

**A. Administration.** 1. There shall be a State agency having primary responsibility for administration and supervision of storing and processing accident information, and providing information needed by user agencies.

2. There shall be employed at all levels of government adequate numbers of personnel, properly trained and qualified, to conduct accident investigations and process the resulting information.

3. Nothing in this standard shall preclude the use of personnel other than police officers, in carrying out the requirements of this standard in accordance with laws and policies established by State and/or local governments.

4. Procedures shall be established to assure coordination, cooperation, and exchange of information among local, State, and Federal agencies having responsibility for the investigation of accidents and subsequent processing of resulting data.

5. Each State shall establish procedures for entering accident information into the statewide traffic records system established pursuant to Highway Safety Program Standard No. 10, Traffic Records, and for assuring uniformity and compatibility of this data with the requirements of the system, including as a minimum:

a. Use of uniform definitions and classifications acceptable to the National Highway Traffic Safety Administration and identified in the Highway Safety Program Manual.

b. A standard format for input of data into the statewide traffic records system.

c. Entry into the statewide traffic records system of information gathered and submitted to the responsible State agency.

**B. Accident reporting.** Each State shall establish procedures which require the reporting of accidents to the responsible State agency within a reasonable time after occurrence.

**C. Owner and driver reports.** 1. In accidents involving only property damage, where the vehicle can be normally and safely drive away from the scene, the drivers or owners of vehicles involved shall be required to submit a

written report consistent with State reporting requirements, to the responsible State agency. A vehicle shall be considered capable of being normally and safely driven if it does not require towing and can be operated under its own power, in its customary manner without further damage or hazard to itself, other traffic elements, or the roadway. Each report so submitted shall include, as a minimum, the following information relating to the accident:

a. Location.

b. Time.

c. Identification of driver(s).

d. Identification of pedestrian(s), passenger(s), or pedal-cyclist(s).

e. Identification of vehicle(s).

f. Direction of travel of each unit.

g. Other property involved.

h. Environmental conditions existing at the time of the accident.

i. A narrative description of the events and circumstances leading up to the time of impact, and immediately after impact.

2. In all other accidents, the driver or owners of motor vehicles involved shall be required to immediately notify the police of the jurisdiction in which the accident occurred. This includes, but is not limited to accidents involving: (1) Fatal or nonfatal personal injury, or (2) damage to the extent that any motor vehicle involved cannot be driven under its own power in its customary manner, without further damage or hazard to itself, other traffic elements, or the roadway, and therefore requires tow.

**D. Accident investigation.** Each State shall establish a plan for accident investigation and reporting which shall meet the following criteria:

1. Police investigation shall be conducted of all accidents as identified in section IV.C.2 above. Information gathered shall be consistent with the police mission of detecting and apprehending law violators, and shall include, as a minimum, the following:

a. Violation(s), if any occurred, cited by section and subsection, numbers and titles of the State code, that contributed to the accident where the investigating officer has reason to believe that violations were committed regardless of whether the officer has

sufficient evidence to prove the violation(s); and (2) for which the driver was arrested or cited.

b. Information necessary to prove each of the elements of the offense(s) for which the driver was arrested or cited.

c. Information, collected in accordance with the program established under Highway Safety Program Standard No. 15, Police Traffic Services, section I-D, relating to human, physical, and highway factors causing individual accidents, injuries, and deaths, including failure to use safety belts.

2. Accident investigation teams shall be established, representing different interest areas, such as police; traffic; highway and automotive engineering; medical, behavioral, and social sciences. Data gathered by each member of the investigation team should be consistent with the mission of the member's agency, and should be for the purpose of determining probable causes of accidents, injuries, and deaths. These teams shall conduct investigations of an appropriate sampling of accidents in which there were one or more of the following conditions:

a. Locations that have a similarity of sign, traffic engineering characteristics, or environmental conditions, and that have a significantly large or disproportionate number of accidents.

b. Motor vehicles or motor vehicle parts that are involved in a significant-large or disproportionate number of accidents or injury-producing accidents.

c. Drivers, pedestrians, and vehicle occupants of a particular age, sex, or other grouping, who are involved in a significantly large or disproportionate number of motor vehicle traffic accidents or injuries.

d. Accidents in which causation or the resulting injuries and property damage are not readily explainable in terms of conditions or circumstances that prevailed.

e. Other factors that concern State and national emphasis programs.

V. *Evaluation.* The program shall be evaluated at least annually by the State. Substance of the evaluation report shall be guided by Chapter V of

the Highway Safety Program Manual. The National Highway Traffic Safety Administration shall be provided with a copy of the evaluation report.

*Summary of comments and recommendations made by the National Highway Safety Advisory Committee on the Accident Investigation and Reporting Standard.* As required by statute, the National Highway Safety Advisory Committee reviewed the Accident Investigation and Reporting Standard and made comments and recommendations to the Secretary of Transportation in May and November 1970, summarized as follows:

1. The Committee endorsed the Accident Investigation and Reporting Standard, as proposed in the final draft, but strongly urged that many details be deleted from the standard and be published instead in the accompanying program manual;

2. The Committee was concerned with the practical problems associated with the mandatory reporting of all accidents, but recommended, after considerable debate, that all accidents should be reported. The Committee stressed that the quantity of information to be reported should be markedly reduced and that the details of reportable data should be covered in the accompanying program manual and not in the standard;

3. Although the Committee supported the standard as proposed, there was minority dissent from the Committee's endorsement of the final standard, as follows: Objection to the provision requiring the citizen reporting of all crashes without a specific dollar threshold; objection to the requirement that accidents be reported to a single State agency; and a suggestion that the Accident Investigation and Reporting Standard be merged with existing standards rather than issued as a new standard. In support of the Committee's position, other members indicated the desirability of having a nationally uniform accident reporting system; that experience with citizen reporting of crashes has already proved satisfactory in many States; that a specific "dollar limit" in citizen reporting of crashes is too subjective for use as a uniform threshold; and that the public will probably accept



the responsibility of reporting crashes to a State agency.

# HIGHWAY SAFETY PROGRAM MANUAL

## SUPPLEMENT A

### VOLUME 0—PLANNING AND ADMINISTRATION

#### Table of Contents

##### CHAPTER

- I. Purpose.
- II. Authority.
- III. General Policy.
- IV. Program Development and Operations.
- V. Program Evaluation.
- VI. Reports.
- VII. Local Government Participation.

##### APPENDICES

##### Appendix:

- A. Glossary of Definitions.
- B. Example of State Enabling Legislation.
- C. Example of State Executive Order.

##### CHAPTER I. PURPOSE

1. *Introduction:* A statewide highway safety program needs leadership and coordination among the various components which comprise it in order for it to achieve the State's objectives in an efficient and timely manner. The statewide program needs to be viewed as a comprehensive undertaking which requires careful and continuing planning, organizing, direction, and control. Because of the wide variety of officials and State agencies responsible for various aspects of highway safety it is considered "... essential to administrative workability and the success of the program that there be one central authority responsible to the Secretary for the State's safety program. Accordingly, the bill as ... [enacted] requires that the Governor of the State be the responsible official. It places no restriction, of course, upon his power to delegate his functions in any way he wishes for administrative purposes, provided he remains the State official responsible to the Federal Government for conduct of the State's program."

2. *Purpose:* The purpose of planning and administration is to draw together under the direction of the Governor all the diverse statewide highway safety activities, including activities responsive to the Standards promulgated by the Department of Transportation, into a well-structured, concerted effort that satisfies the State's highway safety objectives in such a way that a long-

term, stable, and thoroughly professional program is assumed.

##### CHAPTER II. AUTHORITY

The authority for a planning and administration program is contained in Chapter 4 of Title 23, U.S.C. (hereinafter referred to as the Highway Safety Act of 1966). Section 402(b)(1) states that:

"The Secretary shall not approve any State highway safety program under this section which does not . . . (A) provide that the Governor of the State shall be responsible for the administration of the program."

##### CHAPTER III. GENERAL POLICY

1. *Introduction:* a. It is the intent of the Highway Safety Act of 1966 "to increase highway safety" through the promulgation of uniform national Highway Safety Standards. For the purpose of implementing the Act, the National Highway Safety Bureau was created and is charged with the administration of the Act and for providing technical assistance to the States.

b. Under the Act a State is responsible for planning and implementing its own statewide highway safety program. Thus, much latitude is given to the State to develop the specifics of its program according to the State's unique circumstances and particular highway safety needs. However, in order to assure a uniform national program, the Federal Government has issued the guidelines represented by the volumes of this Manual, which should be considered by each Governor or his representative in developing the State's program.

2. *Policy statements:* The Highway Safety Act of 1966 provides the framework for the development of policy guidelines. The following sections of the law, in particular, apply to statewide planning and administration:

a. "... that the Governor of the State shall be responsible for the administration of the program." [23 U.S.C. 402(b)(1)(A)].

b. "... [that] political subdivisions of such State [be authorized] to carry out local highway safety programs within their jurisdictions as a part of the State highway safety program if such local highway safety programs are approved by the Governor and are in accordance with the uniform standards of the Secretary promulgated under this section." [23 U.S.C. 402(b)(1)(B)].

States should encourage the maximum participation in the Highway Safety Program of local political subdivisions by program guidance and financial, professional, and technical assistance.

c. "... that at least 40 per centum of all Federal funds apportioned under this section to such State for any fiscal year will be expended by the political subdivisions of

<sup>1</sup>H. Rept. 1700, 89th Congress, 2d Session, p. 21.

State in carrying out local highway safety programs authorized in accordance with paragraph (B) of this paragraph." [23 U.S.C. 402(b)(1)(C)].

Expenditures to satisfy this provision shall be for the benefit of local political subdivisions.

... that the aggregate expenditures of the State and political subdivisions of, exclusive of Federal funds, for highway safety programs will be maintained at a level of such expenditures for its last full fiscal years preceding the date of enactment of this section." [23 U.S.C. 402(b)(1)(D)].

Federal funds appropriated to finance highway safety programs and local government grants are intended to supplement and not to substitute State and local highway safety program expenditures.

... After December 31, 1969, the Secretary shall not apportion any funds under subsection to any State which is not implementing a highway safety program approved by the Secretary in accordance with this section. Federal aid highway funds apportioned on or after January 1, 1970, to any State which is not implementing a highway safety program approved by the Secretary in accordance with this section shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State is implementing an approved highway safety program. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of the preceding sentence to a State . . ." [23 U.S.C. 402(c) as amended].

Self-evaluation by each State of its highway safety program is required. A review of the State's highway safety program will be required by the NHTSB. Approval by the Secretary of Transportation will be based on the review of the submission by the State.

#### CHAPTER IV. PROGRAM DEVELOPMENT AND OPERATIONS

**Introduction:** This chapter reviews the requirements for and suggests an approach for developing and administering a statewide highway safety program. This chapter and the following chapter concerning program administration together outline a suggested management approach to highway safety programs which embraces all highway safety functions and their relationships to the national standards. This volume does not address itself to those items of the State and community highway safety program that relate to project approvals, fundings, reimburse-

ments, authorizations, apportionment, and other administrative details.<sup>1</sup>

##### a. Management approach.

Since the Governor is designated by law as responsible for the administration of the statewide highway safety programs, the management approach that follows has been structured to be exercised at the State level. However, where necessary, local government relationships to the State management operation have been identified and discussed. Local government participation in the statewide program is recognized as being an extension of the Governor's overall responsibility for the administration of the program. In addition, the management approach is presented as if a State were making initial explorations for implementing a highway safety program. Emphasis is placed on major management activities to be undertaken, organizational criteria, and arrangements, primary responsibilities, decision points, and relationships.

##### b. Management process.

Exhibit I, gives an overview of the entire management process. Each of the major phases of the process is discussed in depth in this chapter.

**2. Program Development:** Highway safety is recognized as requiring the collaboration of a wide variety of services and activities that emanate from the several national standards and the program guidelines set forth in the volumes of this Manual. The challenge of management in this field is to embrace all of the relevant services and activities at all levels of government in the State, and as appropriate, in the private sector and draw them together into a unified program that works in concert to increase highway safety.

##### a. Purpose.

The first phase of managing a highway safety program should consist of formulating and developing the extensive and diverse highway safety activities into a unified program and organizing these activities for management purposes. Such program development assists the Governor in fulfilling his responsibility for the administration of the highway safety program. As such, program development is most appropriately the function of the Governor's designated central administrative official for highway safety at the State level.

##### b. Management cycle.

Although the following management information is broken out in distinct steps, it should be understood that the actual management of highway safety programs forms an ongoing process. In this cycle, the vari-

<sup>1</sup>These are discussed in detail in Volume 100, *Highway Safety Program Administration* to be published.

ous management phases overlap and are not discrete. The information is broken out to show how the phases interrelate.

**c. Establishment of a management organization.**

The initial task in the development and operation of a statewide highway safety

program is the establishment of a management organization. This includes the designation of a central position of authority with responsibility for planning, coordinating, evaluating, and providing leadership to the statewide highway safety program.

**EXHIBIT I—AN APPROACH TO THE STATEWIDE HIGHWAY SAFETY PROGRAM MANAGEMENT PROCESS**

| Program development                      | Program operations and administration        | Program evaluation               |
|------------------------------------------|----------------------------------------------|----------------------------------|
| Establish management organization.....   | Reassess alternatives and set priorities.... | Evaluate statewide program.      |
| Formulate objectives.....                | Analyze and select activities.....           | Evaluate management performance. |
| Identify and interrelate activities..... | Prepare program budget.....                  |                                  |
| Prepare a program structure.....         | Execute and control program.....             |                                  |
| Assign responsibilities.....             | Develop program change control.....          |                                  |
| Conduct program inventory.....           |                                              |                                  |

**(1) Governor's Representative.**

The Governor should appoint a central State official for highway safety.

(a) This official should be known as the Governor's Representative for Highway Safety and should normally function as the highway safety program manager. Throughout the chapter this position will be referred to as the Governor's Representative/program manager. However, a separate position of program manager might be designated in a subordinate administrative position to the Governor's Representative. Exhibit II, presents a representative organization structure which illustrates the central position of the Governor's Representative/program manager.

(b) The Governor's Representative/program manager should act in a staff capacity to the Governor. In discharging his duties, the Governor's Representative/program manager should work at the cabinet level with all State line agencies (e.g., Public Health, Highways, etc.) and independently elected officials with regard to all activities concerning highway safety and the national standards. He should have the responsibility and authority to:

1. Define the objectives of the comprehensive highway safety program and its component activities.

2. Balance and coordinate the State's resources for the greatest overall highway safety program effectiveness.

3. Organize and assume the execution of a statewide highway safety program.

4. Recommend appropriate changes and new activities.

5. Maintain a focal point on highway safety for local jurisdictions.

6. Maintain liaison between the State and the Federal Government, and with other States.

7. Receive and transmit State agency requests for Federal highway safety funds

and assure financial review and approval of such requests.

8. Specify information needs and systems for the planning and analysis of the statewide highway safety programs.

9. Evaluate the statewide highway safety program and provide this information to the Governor on a timely basis.

10. Assist in defining statewide highway safety manpower needs and resources.

11. Review and make recommendations to the Governor on the assignment of responsibilities and the approval of plans and activities of the State departments and agencies involved in highway safety.

12. Coordinate the dissemination of public information on highway safety throughout the State.

13. Prepare a separate budget that represents the highway safety program at the State level.

14. Maintain an advisory role on highway safety to State departments, including the formulation of manpower development requirements.

15. Provide for appropriate inspection and audit.

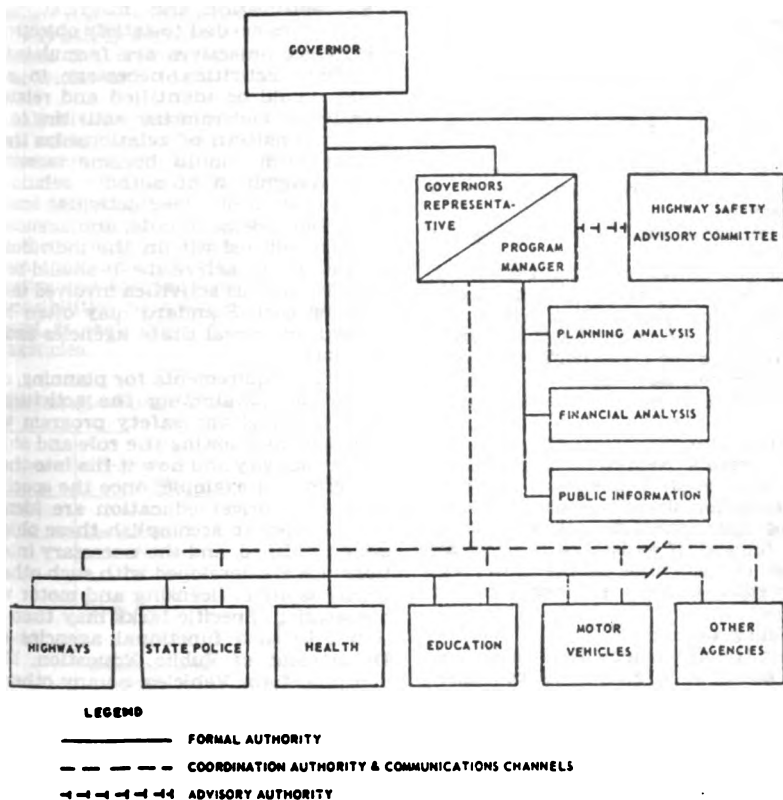
**(2) Relationship with local government.**

The Governor's Representative/program manager should also provide advice, leadership, and coordination for assuring that the Statewide highway safety program and the national Standards are effectively communicated to and executed at the local level. Therefore, he should immediately attend to defining his formal channels of communication within the considerations of his status, the organization of the State government, size of State, and his authority and responsibility.

(a) In overseeing the Statewide highway safety program, the Governor's Representative/program manager should formalize channels of communication with local jurisdictions.

ons consistent with the needs of the  
ram.

EXHIBIT II  
ILLUSTRATIVE ORGANIZATION CHART



) The Governor's Representative/program manager should receive and transmit requests for Federal highway safety for financial review and approval of requests. He (and his designated representative) should assist, as requested, in formulating local highway safety program development and operations.

) Relationship with private sector.

The Governor's Representative/program manager should develop and maintain a working association with private groups and individuals (e.g., PTA's, safety councils, health organizations, research centers, colleges and universities) that do, can, contribute to the improvement of

highway safety in the State. This can be accomplished by having the Governor's Representative/program manager act as the focal point of governmental activities in highway safety and as the official Statewide coordinator of highway safety activities.

(4) State highway safety advisory group.

To assist in fulfilling the requirements and necessary communications of his leadership and coordination functions, the Governor's Representative/program manager may find it desirable to have a highway safety advisory group.

(a) Members of such a group might be appointed by the Governor, or as otherwise provided by appropriate statute, and should

include senior officials from, but not limited to:

1. State agencies.
2. State legislature.
3. State judiciary.
4. Local jurisdictions.
5. Private organizations.
6. Universities.
7. Professional organizations.
8. Labor and industry.
9. Private citizens.

(b) This advisory group should have the responsibility to:

1. Assist the Governor's Representative/program manager in setting State and community highway safety objectives.
2. Provide advice on collecting, analyzing, and disseminating information related to highway safety.
3. Express public attitudes, opinions, and ideas on highway safety.
4. Assist the Governor's Representative/program manager in encouraging innovative highway safety programs and activities.

(c) The Governor might be chairman of such a group and the Governor's Representative/program manager might be designated his alternate as well as secretary of the group.

(5) Staff assistance.

The Governor's Representative/Program manager requires staff assistance of a magnitude depending upon the size and complexity of the Statewide highway safety program. This staff assistance is necessary to support the activities of the Governor's Representative/program manager enumerated above.

(6) Enabling authority.

To assist the Governor's Representative/program manager in effectively coordinating and implementing the Statewide highway safety program, it may be desirable to formalize his role. This can be accomplished by:

(a) First, establishing his position, authority, and responsibilities in law. A discussion of model State enabling legislation is included in Appendix B of this volume.

(b) Second, having the Governor issue a formal executive order to State agencies and local jurisdictions giving recognition to the purpose, authority, and responsibilities of the Governor's Representative/program manager. A model executive order for this purpose is included in Appendix C of this volume.

d. Formulation of highway safety objectives.

Based upon the Governor's policies and the national Highway Safety Standards, a set of specific highway safety objectives should be formulated for the State. These objectives should become the foundations for structuring, selecting, and evaluating services within the highway safety program. While it is apparent that the overall objec-

tive of the highway safety program is the reduction of traffic crashes and fatalities, effort should be directed to further refining objectives of each major program element (driver education, motor vehicle inspection, etc.) to specific sub-goals to be pursued in discrete planning periods (two-year and five-year spans are suggested).

e. Identification and interrelationship of all activities needed to satisfy objectives.

(1) Once objectives are formulated, then all State activities necessary to achieve them should be identified and related. Identifying and relating activities to objectives, the pattern of relationships these activities form should become recognizable. With recognition of activity relationships, the allocation of these activities among organizations, departments, and agencies may be accomplished within the individual considerations of each State. It should be noted that the various activities involved in implementing each Standard may often be performed by several State agencies and organizations.

(2) The requirements for planning, coordinating, and evaluating the activities of the Statewide highway safety program will be enhanced by knowing the role and objectives of each activity and how it fits into the total program. For example, once the specific objectives of driver education are identified, the activities to accomplish these objectives are established, and the necessary interrelationships are developed with such other programs as driver licensing and motor vehicle registration. Specific tasks may then be assigned to such functional agencies as the Department of Public Education, Department of Motor Vehicles, or any other functional organization without inhibiting the required central highway safety planning, coordination, and evaluation.

f. Preparation of a functional program structure.

A program structure is a document that assembles all highway safety program activities into a unified framework. The framework shows the highway safety program as a system composed of related activities.

(1) Preparation of functional program structure involves the actual identification and classification of activities by major highway safety factors (human, vehicle, highway, and system support) and the major program activities (entry, operating, cleanup, disposition, diagnosis). Illustration of a matrix form of this identification and classification is shown as Exhibit III.

(2) Criteria to be applied in assembling highway safety activities within a functional structure are:

(a) The groupings of activities should be logical and similar in purpose and character.

Activity groups should be managed, if possible, by a single agency. (An activity group is a related set of safety activities as listed in Exhibit III by the two activities "Motor Vehicle Inspection" and "Motor Vehicle Registration" along the "Vehicle" under the "Entry" column.)

Major uses of this kind of highway program structure are to:

Assign responsibilities for administering highway safety activities.

Assess the completeness of highway safety activities and identify any deficiencies.

Analyze the interrelationships among highway safety activities and identify coordination requirements.

Organize planning and reporting documents and procedures.

Assignment of activity responsibilities.

Once the program structure takes form, attention should be directed to developing effective and comprehensive distribution responsibilities between levels of government, and, at each level of government, between agencies.

(1) Because of the widely varying laws, conditions, traditions, capabilities, financial resources, and attitudes among the States, no specific recommendation is made here concerning assignment of responsibilities among State and local agencies and jurisdictions.

(2) However, there are fundamental criteria that should be considered in the assignment of program responsibilities. These criteria are:

(a) Responsibility for each highway safety activity should be assigned to specific governmental agencies responsible for geographic or functional areas of a size and/or composition which will enable effective accomplishment of the activity.

(b) Responsibilities should be assigned to jurisdictions that have the ability to plan effectively for the particular activity required and that can carry it out effectively.

(c) A jurisdiction or agency should have the commensurate authority to implement the responsibility and should be accountable for performance.

EXHIBIT III—FUNCTIONAL PROGRAM STRUCTURE MATRIX WITH ILLUSTRATIONS OF USE

| Main factors                      | Program activities                         |                                             |                                                |                                                          |                                                             |
|-----------------------------------|--------------------------------------------|---------------------------------------------|------------------------------------------------|----------------------------------------------------------|-------------------------------------------------------------|
|                                   | Entry                                      | Operating                                   | Cleanup                                        | Disposition                                              | Diagnosis                                                   |
| 1. Curriculum development.        | Curriculum development.                    | Enforcement of rules of the road.           | Emergency treatment.                           | Court operations trial.                                  | Analysis of driver crash and violation statistics.          |
|                                   | Driver testing.....                        | Detection of intoxicated drivers.           | Testing of crash involved drivers for alcohol. | Disposition and rehabilitation.                          | Analysis of driver behavior.                                |
|                                   | Ambulance driver testing.                  | Enforcement of helmet use by motorcyclists. | .....                                          | Reporting.....                                           | Analysis of effects of judicial actions.                    |
| 2. Motor vehicle inspection.      | Motor vehicle inspection.                  | Enforcement of motor vehicle condition.     | Wreckage clearance.                            | Motor vehicle reinspection.                              | Analysis of accident incidence by make and year of vehicle. |
| 3. Motor vehicle registration.    | Motor vehicle registration.                | .....                                       | .....                                          | .....                                                    | .....                                                       |
|                                   | Operating design standards.                | Traffic flow regulation.                    | Highway repair.....                            | Investigation of highway condition.                      | Identification of high-accident locations.                  |
|                                   | Crash design standards.                    | .....                                       | .....                                          | .....                                                    | Analysis of adequacy of operating design.                   |
|                                   | Contract specifications for safety.        | .....                                       | .....                                          | .....                                                    | Analysis of adequacy of crash design.                       |
| 4. Formulation of codes and laws. | Formulation of codes and laws.             | Routine communications.                     | Crash reporting.....                           | Merger of driver, vehicle, highway, and related records. | Analysis of records.                                        |
|                                   | Compilation of driver and vehicle records. | .....                                       | Emergency communications.                      | .....                                                    | Identification of problems and statistical reporting.       |

EXHIBIT III—FUNCTIONAL PROGRAM STRUCTURE MATRIX WITH ILLUSTRATIONS OF USE—Continued

| Program factors | Program activities |           |                                                          |             |           |
|-----------------|--------------------|-----------|----------------------------------------------------------|-------------|-----------|
|                 | Entry              | Operating | Cleanup                                                  | Disposition | Diagnosis |
|                 |                    |           | Emergency transportation, emergency command and control. |             |           |

(d) A jurisdiction should have suitable financial and manpower resources available to support its responsibilities, as well as the flexibility to support the expanding, contracting, or changing requirements that are associated with these responsibilities.

(e) Public support and involvement, which is particularly necessary in highway safety activities, should be fostered by the particular jurisdiction assuming pertinent responsibilities.

(f) Activities should be administered at a governmental level as close to the local community as possible while still satisfying all other criteria.

(g) The overall distribution of responsibilities should form a sound structure for both intergovernmental and intragovernmental operations for realizing highway safety program objectives and should be recognized as such.

(3) After applying organizational criteria such as those listed above to the program structure, the Governor or his Representative should be able to determine what is the best distribution of responsibility for achieving Statewide highway safety objectives.

h. Preparation of a program inventory.

To complete the program development phase, the Governor's Representative/program manager should prepare a Statewide highway safety program inventory. The purpose of this inventory is to identify all current highway safety activities in the State, to measure their progress, and to project existing plans. The program inventory should include the following points:

(1) A description of activities under way and their status (i.e., static, expanding, starting up).

(2) Coverage of existing activities, including:

(a) Volume of service or level of activity, such as:

1. Current work load (number of vehicles being inspected, drivers licenses issued, etc.).

2. Relationship to demand (number of vehicles needed to be inspected, number of drivers licenses being issued, etc.).

3. Relationship to national Standards.

(b) Index or quality specification to which performed (such as quality control in driver education).

(3) Annual cost of existing activities projected level for 2 and 5 years forward States and local activities.

(4) Source of funds for each activity (general fund, Federal aid, etc.).

(5) Assignment of responsibility for forming activities including:

(a) Between levels of government.

(b) Between agencies at each level of government.

(6) Description of plans for expanding volume or raising quality of service or activity.

(7) Management analysis of:

(a) Status (resource requirements, manpower development, etc.).

(b) Status with respect to State goals (the activities meeting objectives?).

(c) Status with respect to national Standards with emphasis on effectiveness.

3. *Program Operations and Administration.* The second phase of managing a highway safety program is the implementation of the program as developed. The five major responsibilities of the Governor's Representative/program manager necessary to this phase are discussed in this paragraph.

a. *Reassessment of alternative approaches and setting priorities within the program.*

To keep pace with changing needs and requirements, there should be a continuing assessment of present programs and formulation of program alternatives. This is most effectively achieved through reviews of the functional program structure as it relates to the objectives of highway safety and to the methods, techniques, and activities of program development. The major checkpoints in this responsibility are:

(1) Ensuring full coverage of the requirements and additional activities in the program.

(2) The use of appropriate methods and techniques in providing services and in recognizing alternative approaches.

(3) Setting priorities among alternatives and between activities to achieve highway safety objectives.

b. *Approach analysis and selection.*

In approach selection, decisions must be made as to what activities to implement and to include in budget preparation. The three primary considerations in approach analysis and selection are:

- 1) The requirements of the Standards.
- 2) The costs of the approach.
- 3) Its benefits (expressed in objective measures).

**Program budget preparation.**

1. A separate program budget should be applied for highway safety.

1) The Governor's Representative/program manager, working in close consultation and coordination with State department heads and officials should examine at least once a year or two the working objectives and needs of the operating State departments to concern highway safety and formulate a highway safety program budget. The decision is to be made during budget preparation on the best distribution of resources to satisfy objectives.

2) The highway safety program budget should translate the working objectives into the resources necessary for highway safety activities as well as express program objectives and costs for the next 5 years. State should also include in its program objectives and costs for the next 5 years the needs of the local political subdivisions.

3) Each continuing year, the 5-year program budget plan should be updated and extended for one additional year.

4) For internal managerial purposes, the highway safety program budget may be converted to line-item format showing resource appropriations distributed to the appropriate State departments.

**Annual program.**

1. An annual work program should be prepared to express the State plan for highway safety for development and submission of applications to the National Highway Traffic Safety Bureau. The procedural details for an annual work program will be contained in Volume 100, *Highway Safety Program Administration*.

**Program execution and control.**

1. In the execution of the Statewide highway safety program, the Governor's Representative/program manager should be concerned with the factors of schedule, costs, and quality of services.

1) Techniques for monitoring the time schedule of activities are available in such forms as Program Evaluation Review Technique (PERT) and bar charts. These techniques will allow the Governor's Representative/program manager to determine if activities are ahead of or behind schedule.

2) Cost control consists of ensuring that expenditures for highway safety are maintained within plans set by the budget and at the desired achievements from expenditures are realized. A basic principle of cost control is for each department and agency to adopt formal procedures for registering actual costs against planned expenditures.

Cost control may be centered around three processes, including:

(a) The clearance of expenditures for authorization before being committed.

(b) A system for reporting costs and achievement to the Governor's Representative/program manager on a periodic basis.

(c) An independent audit of the program to check the propriety of expenditures.

(3) The Governor's Representative/program manager and his staff are encouraged to conduct periodic reviews of programs and particular components of a program at both the local and State levels to ascertain the effectiveness and quality of effort.

**f. Program change control.**

Flexibility is needed to change the program and shift resources during program execution.

(1) To accommodate the need for flexibility in program execution and still keep the program as close to plan as possible, a procedure for receiving, evaluating, and deciding upon requests for program changes should be instituted.

(2) In entertaining any program change request, the Governor's Representative/program manager should consider the following questions:

(a) Does the change increase, decrease, or have no effect on the achievement of program objectives?

(b) What is the impact of change on the highway safety program in terms of structural relationships and coordination?

(c) What costs and resource requirements will be necessary to support the change over the next 2 to 5 years and what effect will there be on approved budget plans?

(3) Each major program change should include replanning and redirection of objectives and effort and a reexamination of alternatives and priorities.

**CHAPTER V. PROGRAM EVALUATION**

1. *Introduction:* The realization of a fully effective Statewide highway safety program necessitates a continuing evaluation of performance. The evaluation should be concerned with the program performance of the total Statewide highway safety program.

2. *Purpose of Evaluation:* Evaluation is needed in order to optimize the allocation of limited resources. It is the means by which State officials can make intelligent decisions on the effectiveness of the overall program, on the individual elements of the Statewide program, and on the stewardship of the program. It identifies the status of the program vis-a-vis objectives and illustrates those areas of effort which need further attention.

3. *Areas for Evaluation:* Two major areas in planning and administration require evaluation:



a. Management performance.

Management performance evaluation is concerned with measuring how well the Statewide highway safety program, and each individual component of the program, is meeting established schedules, staying within planned costs, achieving objectives, and providing quality in implementation.

b. Program performance.

Highway safety program performance evaluation should include the following:

(1) Detecting and correcting program problems.

(2) Determining how well programs are performing against plan.

(3) Determining the value of one program vis-a-vis other programs.

(4) Measuring how well programs are meeting overall highway safety objectives.

4. *Evaluation procedures:* The following procedures are suggested for evaluation of the planning and administration function and for evaluation of the total Statewide highway safety programs in each State. The State is encouraged to develop techniques and procedures which are suitable to the particular legal, demographic, economic, and other characteristics of the State.

a. Evaluation of planning and administration function.

In the early stages of development of the Statewide program it may be helpful to make use of a checklist of items which shows the current status of the program, areas where concentrated effort is needed, and the role of the Governor's Representative/program manager. The following items should be included:<sup>1</sup>

(1) Involvement and participation of State agencies and involvement and participation of local governments.

(2) Enabling legislation or other documents citing the authority of the Governor's Representative/program manager.

(3) Base year criteria, to indicate that aggregate expenditures of the State and local governments for the highway safety program, exclusive of Federal funds, will be maintained at a level which does not fall below the base year average. Some of this information is readily available from the base year criteria and the Section 207 Needs Study work previously submitted.

(4) Current program deficiencies, indicating areas of the current program noted as deficient when compared against the Standards and required remedial action.

(5) Program implementation narrative, including a descriptive presentation of safety program activities based on deficiencies, time phases, and priorities.

<sup>1</sup>This information was sent to the States by the NHTSB on July 22, 1968.

(6) Political subdivision program, with discussion of the State-local government coordination effort.

(7) Measurements of performance as presented in other volumes of this Manual.

b. Evaluation of Statewide program.

Evaluation of the Statewide highway safety program should include:

(1) A set of performance indicators for interpreting the value and effect of services provided by each component of the Statewide program. The indicators should measure volume, quality, and the comparative quantity of work provided. To the fullest extent feasible, the objectives of each program and program component should be quantified (e.g., decreases in numbers of crashes, increases in number of trained drivers, etc.). An example of performance indicators follows in Exhibit IV.

(2) An information system to supply management with accurate and timely data on the quality and quantity of each component of the Statewide program. Information and reports should come from both State departments and local jurisdictions on such items as time schedules, cost data, level of effort, effect of effort, reduction in traffic crashes. This information and reports should show the planned level of accomplishment and the actual level.<sup>2</sup>

(3) A useful technique for approaching the evaluation of ongoing program and elements of programs and for setting priorities within programs and between programs. Cost-effectiveness analysis is a means of measuring the cost of implementing a program or approach in, for example, reducing the number of crashes. Program and approach alternatives should be examined to determine, if possible, which alternative can achieve a specified objective for the least cost.

EXHIBIT IV

EXAMPLES OF PERFORMANCE INDICATORS

Crash rates:

By severity.

By jurisdiction.

By roadway type.

Percentage and numbers:

Of fatal crashes where alcohol is present, by concentration in blood.

Of fatal crashes involving vehicle defects.

Persons fatally injured who were not wearing a safety belt.

Motorcyclists fatally injured who were not wearing crash helmets.

<sup>2</sup>Chapter VI, Reports, of this volume, and Volume 10, *Traffic Records*, present further discussion of information system characteristics.

rates:  
 r capita, by jurisdiction.  
 due to injury:  
 umber of hospital bed-days due to traf-  
 ic crashes.  
 ng of crash causes by injury severity.  
 e deaths:  
 umber.  
 istribution of visibility conditions.  
 er of revoked or suspended drivers  
 L.  
 ency response rates:  
 centage distribution of intervals be-  
 tween crashes producing serious injury  
 nd arrival at medical facilities.

Cost/benefit analysis estimates the  
 ts resulting from a program or ap-  
 t in terms of lives saved, injuries re-  
 and property damage avoided. While  
 limited application in a Statewide  
 ay safety program due to the difficul-  
 isolating the impact of one factor, it is  
 ted that the Governor's Representa-  
 rogram manager use this analysis  
 ver feasible.

## CHAPTER VI. REPORTS

roduction: One of the most impor-  
 lements in the total management of  
 ghway safety program is an effective  
 d for the Governor's Representative/  
 m manager to obtain and/or develop  
 nds of reports which enable him to:  
 an, evaluate, and coordinate the total  
 ide highway safety program.

Establish priorities in the Statewide  
 ay safety program.

Provide guidance to the several operat-  
 departments at the State level and to  
 cal jurisdictions.

Advise the Governor of the State on  
 atus of the Statewide highway safety  
 am.

Prepare, for the Governor, an annual  
 u to the National Highway Safety  
 u which shows a summary evaluation  
 e State program.

Maintain liaison with the National  
 ay Safety Bureau for the exchange of  
 cal and statistical data.

**Management Information Reports:** a.  
 primary purpose of management re-  
 is to enable the Governor's Represent-  
 program manager to determine and  
 or on a continuing basis the status  
 the problems of the Statewide highway  
 y program. To achieve this goal, the  
 rnor's Representative/program manag-  
 ould receive at a frequency necessary  
 effective management, the following  
 of reports:

A report from the head of each operat-  
 department (e.g., Public Health, State  
 e) summarizing the highway safety ac-  
 es in his department.

(2) A tabulation of the statistics of the  
 highway safety program activities from  
 each operating department. For example,  
 the number of persons receiving driver edu-  
 cation, the number of persons convicted of  
 driving under the influence of alcohol.

(3) Reports on the status of projects fi-  
 nanced wholly or in part by the Federal  
 Government.

(4) Reports from local jurisdictions on the  
 highway safety activities under way. The  
 magnitude, complexity, and frequency of re-  
 porting should be based on the extensiveness  
 of the local program.

b. In addition to frequency of reporting, it  
 is important to encourage prompt reporting  
 that will minimize time lags between the  
 issue of the report and the period upon  
 which the report is based.

c. The Governor's Representative/pro-  
 gram manager should assure that reports  
 called for in other volumes of this Manual  
 are prepared and that reports submitted by  
 State agencies to the NHTSB are transmitted  
 through his office.

**3. Evaluation Reports:** a. One of the major  
 management tasks for the Governor's Rep-  
 resentative/program manager is the prepara-  
 tion of reports which show an evaluation  
 of the Statewide highway safety program.  
 Evaluation reports should consist of:

(1) Annual Statewide evaluation of the  
 highway safety program. This report should  
 condense the reports mentioned in para-  
 graph 2 of this chapter into a form which  
 shows the following:

(a) Current status of Statewide program.

(b) Changes from previous year.

(c) Progress made in reducing traffic  
 crashes as a result of the highway safety  
 program and where possible for each major  
 component of the program.

(d) Total cost of the Statewide program.  
 including comparative data and actual ex-  
 penditures and planned expenditures.

(2) A report showing future plans for the  
 Statewide program. This report should  
 show plans and estimated cost for the fol-  
 lowing 12 months and plans over a 5-year  
 period.

b. The evaluation reports should be useful  
 for informing the Governor, the legislators  
 and the public of the progress made in the  
 State in reducing traffic crashes.

**4. Reports to National Highway Safety  
 Bureau:** While this volume is designed for  
 the management of a State highway safety  
 program, it is desirable to include some indi-  
 cation of the need for and desirability of  
 communication between the State and the  
 Federal Government.

a. The prime requirement of communica-  
 tion from the State to the Federal Govern-  
 ment is to transmit information that de-  
 scribes and assesses the State highway  
 safety program. Therefore, the NHTSB has

asked each State for information which will enable the Secretary of Transportation to make determinations required of him by the Highway Safety Act.<sup>1</sup>

b. The NHTSB requires periodic reports from each State to enable the Bureau to be fully informed of the highway safety activities throughout the country and be in a position to analyze the status and needs of the country as a whole.<sup>2</sup>

#### CHAPTER VII. LOCAL GOVERNMENT PARTICIPATION

1. *Introduction:* Planning and administration of a Statewide highway safety program should involve the active participation of local governments because a significant amount of the operational requirements of the national Standards and other highway safety activities is administered at the local levels. It is most desirable to create a close working relationship between the State and its local governments in forming a truly Statewide highway safety program.

2. *Local Public Agency Responsibilities:* a. Local officials in each State should be fully aware of the importance of the role they play in the Statewide program and should endeavor to provide the fullest cooperation in the State's attempt to develop and operate a strong Statewide highway safety program. The chief executive of each jurisdiction (mayor, county chairman, etc.) should assume the leadership in the establishment and implementation of relevant programs and activities in the jurisdiction. Communications from local jurisdictions to the Governor's Representative/program manager should be through him and vice versa.

b. In highly urban jurisdictions it may be desirable to establish the position of a local highway safety program manager. The concepts and guidelines expressed in this volume will be of assistance to a local program manager.

c. Areawide coordination may be assisted through associations of counties and cities, or through other regional arrangements.

3. *Role of Governor's Representative/Program Manager in Local Highway Safety:* The Governor's Representative/program manager has four major responsibilities in fostering local government participation in the Statewide highway safety program. These are:

a. To develop and assist local government leadership in the field of highway safety.

b. To assist in program coordination with and among local jurisdictions.

<sup>1</sup> A procedural guide was sent to the States on this subject on July 22, 1968.

<sup>2</sup> Volume 100 will contain detailed instructions and clarifications on the role and reporting requirements of the National Highway Safety Bureau.

c. To assist in local program development and operation.

d. To review and transmit applications for Federal funds for local highway safety projects and programs within the Statewide highway safety program.

#### APPENDIX A

##### GLOSSARY OF DEFINITIONS

This glossary defines those terms whose meanings may be unclear in the context in which they are used. These definitions are meant to apply only to the usage of the terms in this volume.

*Activity*—The effort involved in providing a service within the highway safety program.

*Allocation*—A sum of money that is designated for a specific purpose.

*Apportionment*—The distribution of Federal funds among the States according to a formula.

*Base Year*—A reference year established by Sec. 402(b)(1)(D) of Title 23, U.S.C. in order to determine the relative State level of expenditures to preceding years.

*Federal Aid*—Funds available to State governments, and through them to political subdivisions, to implement the uniform national safety standards.

*Functional Programs*—A grouping of related activities within the highway safety program responsive to each of the Standards (e.g., motor vehicle inspection, driver licensing, etc.).

*Governor's Representative*—The State official who is responsible to and represents the Governor in the conduct of the Statewide highway safety program.

*Line-Item Budget Requests*—The conventional manner in which State departments, agencies and political subdivisions request budgetary funds for personnel, materials and supplies, equipment, and other operating needs.

*National Standards*—Uniform performance requirements in highway safety promulgated by the Secretary of Transportation in several functional programs.

*Political Subdivisions*—State-recognized administrative units having highway safety responsibilities below the State level and responsive to an electorate residing within a defined geographic area of the State.

*Private Groups*—Organizations outside of government that have an interest, or potential interest, in community affairs and highway safety.

*Professional Groups*—Organizations outside of government that consist of interested governmental officials and/or professionals who participate, or might participate, in the highway safety process.

*Program*—The Statewide aggregate of highway safety activities in a State.

**Program Budget**—The compilation of departmental and political subdivision requests classified and converted to the objectives and cost requirements of the State highway safety program.

**Program Group**—The physical components of the highway safety system consisting of the human, the roadway, the vehicle, and the supportive activities.

**Program Manager**—The State official who is responsible for the management of the highway safety program. The program manager may be the same official as the Governor's Representative or may be appointed by the Governor's Representative.

**Program Structure**—The relationship of the parts of the program (groups, elements, and activities) bear to one another.

**Statewide Highway Safety Program**—The coordinated State and community efforts in highway safety.

## APPENDIX B

### SAMPLE OF STATE ENABLING LEGISLATION

The following suggested State Enabling legislation has been prepared to call to the attention of the States the provision of the Highway Safety Act of 1966 which requires the Governor of the State shall be responsible for the administration of the highway safety program.

It should be noted that the form and content of the proposed legislation are merely suggested and that each State should prefer for legislative action proposed legislation that will enable that State, considering peculiarities of the law and constitution of that State, to secure the benefits available to the State under the Act. Implementation of a Highway Safety Act may require additional legislative action at the State level. As an example, legislation may, in a particular State, be necessary to enable the State's political subdivisions to expend the percent or more of the funds as provided in the Act. Therefore, existing constitutional and other requirements should be carefully examined to ensure that all contingencies are considered. Other possible problems of a legislative nature will, no doubt, be revealed in due course.

Section 402(a) of Title 23, United States Code, provides that "each State shall have a highway safety program approved by the Secretary . . . ."

One of the mandatory conditions, in fact the first condition, attached by the Congress to the Secretary's approval of a State's highway safety program, requires that the ultimate responsibility for the administration of that program rest with the State Governor.<sup>2</sup>

The Governor may, however, administer the Statewide highway safety programs through an appropriate instrumentality of the State.

To enable each State to secure the benefits made available to it under the Act, therefore, it is strongly urged that State legislatures assign the highest priority to the enactment of an assent (or consent) statute, similar to existing State statutes originally enacted following the passage in 1916 of the first Federal-aid Highway Act.

These assent statutes have operated to empower the various State highway departments or road commissions to discharge the responsibilities devolved upon them by the provisions of section 302(a) of Title 23, United States Code. Unless a State's statutory law or constitution already confers the authority contemplated by section 402(b)(1)(A) of Title 23, United States Code, upon its Governor (to administer and be responsible for the State's highway safety program), immediate legislative activity in this area will be necessary. Legislative enactments to accomplish that objective should repeal or modify all State law inconsistent therewith.

It is conceivable that such legislation may be inconsistent with some constitutional provision of a State. In that event, of course, an appropriate constitutional amendment might be necessary.

The National Highway Safety Bureau has suggested that State legislatures consider adopting the following language for their respective assent statutes in connection with the Highway Safety Act:

"The Governor, in addition to other duties and responsibilities conferred upon him by the constitution and laws of this State is hereby empowered to contract and to do all other things necessary in behalf of this State to secure the full benefits available to this State under the Highway Safety Act of 1966, and in so doing, to cooperate with Federal and State agencies, private and public agencies, interested organizations, and with individuals, to effectuate the purposes of that enactment, and any and all subsequent amendments thereto. The Governor shall be the official of this State having the ultimate responsibility for dealing with the Federal Government with respect to programs and activities pursuant to the Highway Safety Act of 1966 and any amendments thereto. To that end he shall coordinate the activities of any and all departments and agencies of this State and its subdivisions, relating thereto."

Section 402(b)(1)(A) provides: "The Secretary shall not approve any State highway safety program under this section which does not provide that the Governor of the State shall be responsible for the administration of the program."

## APPENDIX C

EXAMPLE OF STATE EXECUTIVE ORDER<sup>1</sup>

## The State of

## Executive Order

**WHEREAS**, The Enabling Act (or cite other appropriate State law) has authorized and directed the Governor to do all things necessary on behalf of the State to secure the full benefits of the Federal Highway Safety Act of 1966, Pub. L. 89-564, 80 Stat. 731, to improve the highway safety of the State; and

**WHEREAS**, The said Enabling Act has further designated the Governor as the officer ultimately responsible for the highway safety programs pursuant to the said Highway Safety Act of 1966, and authorized and directed him to coordinate the activities of any and all departments and agencies of the State and its subdivisions for such purpose; and

**WHEREAS**, It is necessary to establish a formal organization and delegate thereto certain of the Governor's powers and authority for the execution of the said highway safety program:

**NOW, THEREFORE, I, \_\_\_\_\_, Governor of \_\_\_\_\_, order and direct as follows:**

1. That there is hereby established in the Executive Branch of the State government an office of Highway Safety, headed by a Governor's Representative for Highway Safety appointed by and serving at the pleasure of the Governor, and staffed by such other officers and employees as the said Representative may from time to time appoint according to law.

2. That there is hereby delegated to the Governor's Representative all the powers and authority vested in the Governor by the Enabling Act (or cite other appropriate State law), except the following: (enumerate reservations, if any), and he is directed to exercise the same in pursuance of the said Act. The powers and authority hereby delegated to the Governor's Representative may be redelegated within the Office of High-

<sup>1</sup>It should be noted that the form and content of the above example are merely suggested, and that each State with the advice of its legal counsel should prepare such executive documents in conformity with the particular law of that State as will provide it adequate organization, authority, and direction to secure the benefits of the Highway Safety Act of 1966. It should also be noted that enabling legislation, such as suggested in Appendix B, ante, may be required as the basis of such executive action.

way Safety, except: (enumerate reservations, if any).

3. That all departments and agencies within the Executive Branch of the State government are to cooperate with the Governor's Representative in the performance of his highway safety functions provided herein, to the full extent permitted by law.

4. That this Order shall take effect upon (fixed date), (appointment, qualification, confirmation of Governor's Representative (other contingency)).

## SUPPLEMENT B

## VOLUME 102—HIGHWAY SAFETY PLAN

## TABLE OF CONTENTS

## Chapter

- I. Introduction
- II. Content of HSP
- III. Submission and Approval
- IV. Evaluation
- V. Reporting Procedures

## Appendices

- A. Glossary of Terms
- B. Minimum Requirement Compliance Certificate

## CHAPTER I—INTRODUCTION

1. **Purpose.** This volume establishes NHTSA and FHWA policy and procedure for the submission of each State's Highway Safety Plan (HSP). It supersedes the requirement for the Annual Work Program (AWP) and the Comprehensive Plan (CP).

2. **Definition.** The Highway Safety Plan provides multi-year planning capability as current year program implementation which is the basis for the execution of Federal-aid Agreement. The HSP will be updated on an annual basis.

3. **Authority.** 23 U.S.C. 402(a) requires that each State shall have a highway safety program approved by the Secretary, and that such programs shall be in accordance with uniform standards promulgated by the Secretary. Since inception of the highway safety program, section 402(a) has been interpreted as requiring submission by the States of a general or master plan covering existing and proposed State highway safety activities for a multi-year period. In accordance with 23 U.S.C. 315, the Secretary or his delegate is authorized to promulgate rules and regulations to implement section 402(b) prescribing the form, time, manner of submission, and annual updating of State HSPs.

The following sections of Chapter I of Title 23, applicable to Federal-Aid highway funds, apply to the HSP, including: Section

as to program and approval; section 110, as to plans, specifications, and estimates, and project approval; section 110, as to the project agreement including provisions for maintenance; and section 120 as to Federal share payable.

Section 402 provides that the Secretary shall not apportion any highway safety funds to any State which is not implementing an approved program. The HSP for any Federal fiscal year, will serve as a basis for a determination that a State is continuing to implement an approved program. It will also provide State input to the NHTSA Plan (NHTSA Order 510-2, August 1975).

Section 403(b) of the Powerplant and Industrial Fuel Use Act of 1978 (92 Stat. 3318; E.O. 12185-620) and Executive Order 12185 require each Federal agency to take such action as lie within its authority to maximize efficient use of energy and the conservation of petroleum and natural gas in programs funded by the agency.

**Background.** All States had highway safety programs approved by the Secretary by December 31, 1969, as required by 23 U.S.C. 402. These programs represented the State's Plan covering existing and projected highway safety activities for the 4-year period. Until the beginning of Fiscal Year 1972, most federally supported and local highway safety activities related to implement the State's Plan were administered on a project-by-project basis.

**Fiscal Year 1971,** a new procedure—Annual Work Program (AWP)—was introduced. The AWP described the annual goals to be achieved and all work to be done in implementing one year of a State's Plan.

**Fiscal Year 1973,** the States were required to prepare a new Comprehensive Plan (CP) of current and proposed highway safety activities, for the 4-year period from Fiscal Year 1974 through Fiscal Year 1977. Revisions to the CP were required for Fiscal Year 1976 to include provision of curb cuts for the handicapped and bicycle safety education programs, in addition to provisions of the Vehicle-in-Use (VIU) standards.

**Fiscal Year 1977,** nine States piloted a new Vol. 102 Highway Safety Management System Plan (HSMSP), designed to supersede the Annual Work Program (AWP) and the Comprehensive Plan (CP). As a result of the pilot program, Vol. 102 is now being revised as a Highway Safety Plan (HSP). A draft version of Vol. 102 was previously released for optional use by the States in their Fiscal Year 1978 submittal.

**General requirements.** 23 U.S.C. 402(b)(1), 92 Stat. 3318, sec. 403(b), and E.O. 12185 impose certain requirements which must be met as a prerequisite to program approval. To attest that it meets these re-

quirements, a State must submit a Certificate of Compliance (Appendix B).

Procedures for implementing the program are contained in the following issuances:

Volume O, Highway Safety Program Manual for Planning and Administration.

Joint NHTSA/FHWA Order 900-4/7-5, August 10, 1971—Guidelines for the Designation of a State Agency Responsible for Highway Safety.

NHTSA Order 460-1, November 2, 1970—State Systems of Administrative and Financial Procedures.

6. **Policy.** a. With reference to the requirements set forth in section 402, State highway safety programs shall be in accordance with the uniform standards, and the Secretary shall not apportion any funds to any State which is not implementing an approved program. 23 U.S.C. 402(c), as amended in the 1976 Highway Safety Act, provides that implementation of a highway program shall not be construed to require the Secretary to require compliance with every uniform standard, or with every element of every uniform standard, in every State.

b. With reference to the statutory requirement that at least 40 percent of all Federal funds apportioned under 23 U.S.C. 402 be expended by political subdivisions in each State, it is DOT policy that political subdivisions must have an active voice in the initiation, development, and implementation of those safety activities so credited to assure that the local participation in highway safety intended by Congress is achieved. NHTSA/FHWA Order No. 462-8/7510.2, Political Subdivision Participation in State Highway Safety Programs, dated June 23, 1976, sets forth this policy in further detail.

c. With reference to the energy conservation requirements of section 403(b) of the Powerplant and Industrial Fuel Use Act of 1978 and E.O. 12185, each State receiving funds under 23 U.S.C. 402 shall consider, in the formulation of a Highway Safety Plan, measures by which the efficient use of energy and conservation of energy resources can be maximized in the implementation of the State's highway safety program.

7. **Civil rights requirements.** The Governor's Representative for Highway Safety is responsible for assuring that full consideration of Title VI of the Civil Rights Act of 1964 and 23 U.S.C. 324 are included as an integral part of the planning and development of the HSP.

The "Civil Rights Assurances with regard to the State's Highway Safety Program" continue to be incorporated to ensure that no person shall, on the grounds of race, color, sex, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination.

The State and/or sub-grantees must maintain racial/ethnic data and program information sufficient to permit an initial determination by NHTSA/FHWA that recipients will in fact comply with Title VI and 23 U.S.C 324 requirements, and to enable the appropriate Federal funding agency and its State counterpart, to effectively monitor Title VI and 23 U.S.C 324 compliance as necessary and appropriate.

Pending issuance of regulations setting forth specific data requirements, each applicant or recipient of 402 funds should determine:

a. The manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination;

b. The population eligible to be served, by race, color, sex, and national origin;

c. The availability of data regarding covered employment, including use or planned use of bilingual public-contact employees serving beneficiaries of the program, where necessary, to permit effective participation by beneficiaries unable to speak or understand English;

d. The location of existing or proposed facilities connected with the program, and related information adequate for determining whether the location has, or will have, the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination;

e. The present or proposed membership, by race, color, sex, and national origin in any planning or advisory body which is an integral part of the program; and

f. Where relocation is involved, the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color, sex, or national origin.

Additional data, necessary for understanding the information compiled, such as demographic maps, may be required to the extent that it is readily available or can be compiled with reasonable effort.

#### CHAPTER II—CONTENT OF HSP

1. *Purpose.* This Chapter provides guidelines and procedures for the preparation of a State's Highway Safety Plan (HSP).

2. *General.* The HSP is a multi-year planning document which: Identifies a State's highway safety problems, establishes goals and objectives to be achieved, estimates the resources required to achieve those goals and objectives, and specifies the activities which are planned to solve identified problems.

The HSP shall cover the current fiscal year program and planning for three, four or five additional years.

3. *Preparation of the Highway Safety Plan.* The HSP consists of the following (6) parts, two of which are optional:

I. Highway Safety Plan Summary.

II. Overall Statewide Problem Analysis.

III. Overall Statewide Goals.

IV. Program Structure (Optional).

V. Program Modules.

VI. Research/Demonstration Requirements (Optional).

a. *Highway Safety Plan Summary (Part I).* This part should consist of the Certificate of Compliance (Appendix B), a HSP Summary and an Executive Summary which provides a brief multi-year overview of the State's program status, planned activities and anticipated accomplishments. It should include: Accident Trends; Significant Statewide Problems Identified; Program Goals and Priorities; Statewide Program of Energy Conservation Measures Considered; Key Legislative Needs and Planned Administrative Actions.

b. *Overall Statewide Problem Analysis (Part II).* This part should provide sufficient statistical data and analytical information to define impact and to support problem areas identified and to establish program priorities. More detailed analysis on specific problems should be described in the related Program Modules (Part V (pg. II-5)).

The detailed data analysis and resulting reports should be retained by the Governor's Representative and be made available for review by NHTSA Region/FHWA Division Staff as necessary. Problem identification analysis and reporting processes are addressed in detail in the *Problem Identification Manual for Traffic Safety Programs*, NHTSA Vols. I and II.

As part of the data analysis phase of development, the State must give full consideration to the requirements of Title VI of the Civil Rights Act of 1964. Data related to Civil Rights considerations are to be made available for review, as needed, in the Office of the Governor's Representative for Highway Safety.

Two types of problems should be identified from the problem analysis process: impact problems and systems support problems.

(1) *Impact Problems*—An impact problem is directly related to factors contributing to accidents, fatalities and/or injuries, and may be corrected by application of countermeasures designed to minimize the effect of these factors. Impact problems can be identified from analyses of Statewide traffic records data. The analyses should consider, as a minimum: Pedestrian accidents; Motor cycle accidents; Pedalcycle accidents; Passenger Car accidents; School Bus accidents; Truck accidents; Problem Drivers; Roadway and Roadway Hazards; Alcohol Involvement.

it; Youth Involvement; Defective Vehicle Involvement; Suspended/revoked Driver Involvement; Safety belt usage; Speed Involvement.

**Systems Support Problems.** A systems support problem is a deficiency in a vital traffic safety program function, the correction of which may not be directly related to accident/fatality/injury changes. Systems support problems are identified from an analysis of the existing traffic safety system, a review of legislative and regulatory requirements. An inventory of ongoing programs and an analysis of their characteristics in relation to accepted standards and practices is necessary to identify deficiencies, e.g., an assessment of the Highway Traffic Program Standards' status and operational programs' status is often a valuable step in identifying systems support problems. One example could be a required inventory of State and local agency data on available equipment and user needs to fully implement a Statewide traffic safety system. Another example would be lack of an accident location reference system for local roads and streets off the main road and State highway systems.

**Highway-Related Safety Activities.** After coordination between the Section planning process and activities carried under the safety construction program be achieved through the problem identification process emphasized in the HSP, Section 402 highway-related safety activities are used predominately to correct systems support problems which when resolved, will provide a basis for the safety construction program. The system support deficiencies may be identified through a review of accident statistics, the effectiveness of the process used to establish priorities for a schedule of safety construction projects, evaluations of the safety program, studies to determine highway-related problems and analysis of ongoing highway safety programs in relation to accepted standards and practices.

Any safety construction improvements which are to be used to correct an impact problem in a Program Module (Part V) should be shown in the Problem Solution Plan (pg II-7). These activities also should be included in the Overall Statewide Problem Analysis and the Overall Statewide Plan.

**Overall Statewide Goals (Part III).** The plan should address the State's overall goals and objectives for the current year and planning years as documented in Program Modules (Part V). The overall statewide goals should represent the cumulative attainment of Program Module goals established for identified impact and systems support problem areas.

Impact Module goal statements should be expressed in terms of predicted change in

accidents, fatalities and/or injuries, over time. Systems Support Module goals should be measurable and quantifiable and address levels of long range achievement of activities planned to correct identified deficiencies. The attainment of individual Program Module goals is dependent upon the cumulative achievement of the objectives established for each related Problem Solution Plan (PSP).

The provision for overall Statewide program evaluation, as required in Chapter IV, should be included under this part, insofar as it may be related to attainment of impact and systems support goals. This evaluation overview should describe the methodology and criteria to be used for modules selected for effectiveness evaluation and the administrative evaluation of all program modules.

**d. Program Structure (Part IV) (Optional).** A program structure provides a management framework for assembling the highway safety program activities into logical, manageable groups for State and local implementation. As such, it illustrates interrelationships among highway safety activities and identifies requirements for interagency coordination and organizational responsibilities.

Each State should develop its Program Structure concept and format in accordance with its individual program planning requirements. Program structure formats can be represented by flow diagrams or networks for the following purposes: To tie the human, vehicle and environmental highway factors to related program areas, problem areas and/or countermeasure areas; To subdivide program areas into countermeasures or task activities related to identified problems.

Regardless of format, the value of a Program Structure is its ability to graphically illustrate the total scope of the highway safety programs in terms of the full range of activities which may be implemented depending upon allocated resources and priorities established through problem identification.

**e. Program Modules (Part V).** This part is the foundation of the Highway Safety Plan. It provides the framework for defining, scheduling and estimating the cost of program activities required to solve problems identified from analyses of accident data and existing traffic safety systems. A complete Program Module consists of a Problem Statement, a Problem Solution Narrative (including a Program Module Cost Summary), an Evaluation Plan, Problem Solution Plan(s) (PSPs) and PSP Task Narratives; these components are described in detail in this Chapter and appropriate Appendices.

Each State is urged to submit its HSP with all Program Modules complete. If a State is unable to do so, it is acceptable to



present incomplete Program Modules. An incomplete Program Module must contain a Problem Statement and Problem Solution Narrative which includes proposed PSP objectives and estimated costs. These elements should adequately describe the problem and the general strategy to be used by the State to solve the problem. Upon submission of all PSPs necessary to complete a Program Module, an evaluation Plan for that Module should be addressed.

Although the emphasis of this part is on problem solution, there are program areas that require State action though they may not be identified as problems. These areas—Planning and Administration (Management), legislatively mandated programs (e.g., School Bus Driver Training, 23 U.S.C. 406) and administratively mandated programs will require the submission of a Special Program Module for each area which will contain a description of current program status and activities planned to meet operational objectives, together with a PSP(s) and task narrative(s).

The magnitude and area of identified problems will vary, and a number of countermeasures might be applicable in solving a given problem area, each requiring different objectives, tasks and timeframes for implementation.

Program Modules may consist of the following types of activities: (1) Program Modules with Problem Solution Plans involving only NHTSA activities; (2) Program Modules with separate Problem Solution Plans involving FHWA and NHTSA activities; and (3) Program Modules with Problem Solution Plans involving only FHWA activities.

A complete Program Module shall consist of the following five components:

(1) *A Problem Statement.* Contains a description of the problem area and related analyses.

(a) The description should indicate the magnitude of the problem area, its relation to other problems identified in the overall Statewide Problem Analysis, and whether it involves impact and/or systems support problems.

(b) Impact Problem statements should be supported with quantitative information, abstracted from the detailed data analyses, which rationalizes the identification of the problem area and substantiates the selection of countermeasures proposed.

(2) *A Problem Solution Narrative* outlines the countermeasures to be undertaken to meet anticipated Program Module goals, as well as any incremental timetable for meeting the goals over the period covered by the HSP. Impact problem goals are stated in terms of predicted change in accidents, fatalities and/or injuries. Systems support problem goals are stated in terms of the achievement of activities planned to correct identified deficiencies. Each PSP objective

should be discussed as it relates to the overall Program Module goal(s). Those programs implemented entirely with State (local funds, and not used for matching which relate to the problem area addressed by a Program Module, should be described in the Problem Solution Narrative.

Those programs in which 23 U.S.C. funds will not participate, but the costs, which will be credited toward the State matching share, shall be identified in the Problem Solution Narrative of an appropriate Program Module and be included in a related PSP, regardless of whether or not they contribute to the solution of a problem.

Estimated costs of each PSP should be shown on a Program Module Cost Summary Form. The concepts of Zero Base Budgeting should be applied to justify the resource requirements for all planned activities. To estimate the base level of Federal funds available for the programming year, the State should use the previous year's obligation limitation, plus 10 percent, plus any carryover funds. To estimate the base level of Federal funds available for the planning years, 10 percent should be cumulatively added to the estimated Federal funds available for each planning year.

(3) *An Evaluation Plan* explains how the evaluation will be conducted and identifies the criteria to be used in measuring objectives as they relate to Program Module goals. Administrative (performance) evaluation in accordance with Chapter IV, Paragraph 5, will be made for all Program Modules to determine how efficiently or productively task activities have been carried out in relation to predetermined qualitative and/or quantitative performance criteria. All impact Program Modules should be subjected to some degree of effectiveness (impact) evaluation within the limits of State's capability.

Chapter IV defines the types of evaluation applicable to a HSP.

(4) *A Problem Solution Plan (PSP)* specifies problem solution objectives, lists the tasks to be implemented within an established time frame and specifies funding resources to be allocated.

Since a PSP should be developed for each major countermeasure to be implemented in a Program Module, it may be necessary to prepare several PSPs with different objectives, tasks and time frames to achieve the goal(s) of a Program Module.

Separate Problem Solution Plans shall be prepared for FHWA and NHTSA activities.

(5) *A PSP Task Narrative* describes the activities to be carried out under each planned task and explains how the task relates to the PSP objective(s).

Where applicable, tasks should be expressed in terms of quantifiable items of work.

with milestones for implementation. populations to be serviced by each. They should be identified, and performance indicators expressed in terms of a pre-numerical and/or percentage change at a given pre-task baseline.

**Research/Demonstration Requirements Problem Solution (Part VI) (Optional).** FHWA and the NHTSA each administer a comprehensive centralized program of research, demonstration, and manpower development with Federal funds under 23403 in support of the State and local highway safety programs authorized by 23402.

Demonstration projects are developed on the basis of need, likelihood of effectiveness, and results of prior research, and investment. These projects are awarded on a competitive basis with the Federal costs borne by the 403 funds; supplemental funding may be provided from State, local, or Section 402 funds is dependent on individual project circumstances.

States and local governments are invited to identify research needs and suggest projects for investigation.

#### AFTER III—SUBMISSION AND APPROVAL

**Purpose.** This Chapter provides guidelines and procedures for the submission and approval of a State's Highway Safety Plan.

**Submission.** In accordance with Office of Management and Budget (OMB) Circular No. 95, Part III, the Governor or his designee shall be given the opportunity to review the HSP and to comment on its relationship to comprehensive and other plans and programs.

The HSP shall be submitted no later than the first of each year. Incomplete Program Plans submitted in accordance with Section II, 3.e. must be completed and submitted by February 1 of the following year. The Governor or his designated representative shall furnish three copies of the State's HSP to the NHTSA Regional Administrator and two copies to the FHWA Division Administrator.

**Environmental impact review.** In accordance with Joint Order FHWA 7550.1/SA 560-2, dated June 30, 1974, the FHWA Division Administrator and the NHTSA Regional Administrator, in consultation with the Governor's Representative, shall review that portion of the HSP for which they are responsible to determine potential impact on the environment.

**Approval of the Highway Safety Plan.—Program Approval.** (1) By September 1, the HSP is extended by mutual agreement, written notice of approval of the HSP, in whole or in part, shall be signed jointly by the FHWA Division Administrator and the NHTSA Regional Administrator and issued by the Governor, together with a statement

of conditions, if any, on which approval is granted.

The HSP shall not be approved unless it contains a statement, signed by an authorized State official, certifying that the efficient use of energy and the conservation of energy resources were considered in planning the State's highway safety program and the FHWA Division Administrator and the NHTSA Regional Administrator determine that the HSP describes specific program areas in which energy conservation has been considered and evaluates the prospects for energy conservation in those areas through implementation of the plan.

(2) Authorization to proceed may be given at the same time as written notice of program approval under the circumstances outlined in subparagraph b of this paragraph. If authorization to proceed is not given at the time of program approval, the written notice to the Governor shall contain the following clause:

Program approval only shall not constitute any commitment of Federal funds nor shall it be construed as creating, in any manner, an obligation on the part of the Federal Government to provide Federal funds to the State's HSP.

(3) In the event that it is necessary to disapprove the HSP, in whole or in part, the FHWA Division Administrator and the NHTSA Regional Administrator shall transmit a jointly signed letter to the Governor's Representative setting forth the reasons for disapproval and the specific corrective action recommended. A copy of the letter shall be sent to the Associate Administrator for Traffic Safety Programs, NHTSA and the Associate Administrator for Safety, FHWA. The Governor's Representative may resubmit the HSP after taking appropriate corrective action.

**b. Authorization to Proceed.** (1) Authorization to proceed with implementation of approved Problem Solution Plans (PSPs) in the HSP shall constitute an obligation of Federal funds for the part of the HSP for which such authorization is given. Program Modules should be complete at the time the HSP is submitted for program approval. However, it is within the discretion of NHTSA and FHWA to grant authorization to proceed with implementation of individual PSPs within an incomplete Program Module.

(2) Federal funds obligated for the HSP shall be subject to availability of Federal obligational authority and any other limitations as may be prescribed by statute, administrative action, or conditions of approval. In all cases Federal reimbursement shall be limited to the Federal pro rata share of costs incurred after the date of authorization to proceed.

(3) If the information submitted by the State permits, and if the State has made provision for the State's pro rata share of the cost of the program, authorization to proceed may be given at the same time as written notice of program approval.

(4) The FHWA Division Administrator and the NHTSA Regional Administrator shall each, unilaterally, give authorization to proceed with implementation of PSPs falling within their respective areas of responsibility by written notice to the Governor's Representative, together with a statement of conditions, if any, controlling the PSP's implementation.

(5) Standard Form 424, Report of Federal Action, will be submitted by the NHTSA Regional Administrator to the State Central Information Reception Agency (SCIRA) in accordance with Treasury Circular 1082, and as prescribed in NHTSA Order 463-1, dated March 21, 1977, Subject: Grant-In-Aid Information.

**c. Federal-Aid Agreement.** (1) The Federal-Aid Agreement, HS Form 62, Appendix H, Exhibit I, shall be executed by the State following approval, in whole or in part, of the current year's portion of the HSP by NHTSA or FHWA. Duly authorized NHTSA or FHWA officials shall sign the Agreement subsequent to signature by the State. The Agreement shall indicate the conditions, if any, upon which authorization to proceed is given. Compliance with these conditions by the State may be acknowledged by the Administration which imposed the conditions, thus making it unnecessary to amend the Agreement for this purpose.

(2) The Federal Funds column on the Agreement under the section entitled, "Obligated Program," shall include those amounts to be funded from the current and prior year's obligational limitation. Those funds carried over from prior years should be shown separately on the Agreement.

(3) The estimated total cost of the program shall include all PSPs.

(4) If State, local or Federal funds for any portion of a HSP are not available for obligation at the time the Agreement is executed, such funds should be retained in the "Approved Program" section.

**d. Agreement Modification.** The Modification of Federal-Aid Agreement, HS Form 62A, is to be used to amend the HSP Agreement each time the State is authorized to proceed with any additional part of the HSP. Such modification will be needed to increase or decrease the amount of Federal funds obligated, to decrease the amount of State and/or local funds obligated or to transfer funds from the approved program section to the "Obligated Program" section. The form is also to be used at the final voucher stage to provide additional Federal funds to cover approved PSP revisions and minor PSP changes made in accordance

with the provisions set forth in Par. 5.c. below.

**5. Revision of the HSP.—a. Program Modules.** After the HSP is initially approved, State may revise its HSP by submitting a new Program Module(s) for approval.

**b. Problem Solution Plans.** The State may revise the current year's portion of its HSP by submitting a revised PSP and, as needed, the related PSP narrative for approval when:

(1) Additional Federal funds become available to fund work not provided within approved program.

(2) The NHTSA or FHWA approval creates a condition requiring a change.

(3) The cumulative amount of transfer among direct and indirect cost categories within a PSP or among PSPs exceeds or is expected to exceed:

Five percent or \$10,000, whichever is greater, for PSP budgets in excess of \$100,000; or

Five percent for PSP budgets of less than \$100,000.

(4) The scope or objective of an approved PSP change.

**c. Procedures for revision.** (1) Copies of each revised PSP required by paragraph 5 will be submitted as follows:

Three copies to NHTSA Regional Administrator.

Two copies to FHWA Division Administrator.

(2) When a revision of a PSP increases or decreases the amount obligated by the State on the Agreement, the Agreement shall be modified in accordance with Par. 4.d. to reflect the new amounts obligated. No revision shall be made pursuant to this subparagraph without prior approval by FHWA or NHTSA.

(3) When changes in the nature or scope of a PSP do not come within paragraph 5.a, a list of such changes will be submitted by the end of each fiscal year by memorandum to the NHTSA Regional Administrator and FHWA Division Administrator.

**6. Annual updating of the HSP.** Since the HSP provides for advance program planning over a 3 to 5 year period, each successive annual program submitted may represent in large part, a continuation of Problem Solution Plans implemented in the prior fiscal year. Those PSPs to be continued, in accordance with the Plan, without change from the prior fiscal year, will show only the funding by task for the current program year, with any appropriate changes in the PSP Task Narrative.

<sup>1</sup>OMB Circular A-102, Attachment K, August 24, 1977.

subsequent annual submittal of the should reflect only those substantive in activities and costs resulting the identification of new problems, the of new goals and the development of Program Modules and Problem Solution Plans.

**Matching of Federal Funds.** a. The Federal share of funds payable under the Act as described in 23 U.S.C. 120 and 23 U.S.C. 402(d) shall be computed on the basis of the costs reported on the Federal-Aid Application, HS Form 62 (Exhibit 1, Appendix I).

The Federal share shall not exceed 70 percent (or the applicable sliding scale rate) of the total costs of the HSP as authorized by 23 U.S.C. 120(a) and 23 U.S.C. 402(d).

**Reimbursement of Federal share.** a. Order 460-4/7510.1 and FMC 74-47 to State claims for Federal participation and reimbursement. In addition, specifying criteria are contained in the Highway Safety Program manuals and/or supplements, except to the extent restricted by 23 U.S.C. 116 and the agreement with respect to maintenance, 23 U.S.C. 402(b)(1)(a) and implementing regulations with respect to administrative functions of the State Agency responsible for administering the State's highway safety program.

State claims for reimbursement of the Federal share of the cost incurred under the agreement shall be submitted on vouchers in accordance with other directives. OMB Circular A-102, Attachment L, provides that States will submit all financial and performance reports within 90 days after the completion date of each PSP. The NHTSA Regional Administrator or the FHWA Division Administrator may grant extensions when requested by the States.

#### CHAPTER IV—EVALUATION

**Purpose.** This Chapter defines the types of evaluation and provides requirements for evaluation planning. This Chapter does not describe evaluation methods or techniques.

**Scope.** This Chapter relates only to the State and Community Highway Safety Program, 23 U.S.C. 402.

**General.** Evaluation assists management in measuring countermeasure effectiveness and program performance efficiency and serves as an input to other management functions, such as planning, program selection, countermeasure selection and assignment of resources.

Requirements for periodic evaluations are included in each Program Standard.

The number of evaluation requirements varies as the complexity of performing program and project evaluation requires careful and comprehensive evaluation planning. The "how-to" evaluate highway safety agencies is described in the manual entitled

The Evaluation of Highway Traffic Safety Programs—A Manual for Managers (Report No. DOT-HS-4-00883-7), dated July 31, 1975, NCHRP Report 162, entitled Methods for Evaluating Highway Safety Improvements, TRB 1975, provides an additional reference for evaluation.

**4. Types of evaluation.** For the purposes of this Chapter, two types of evaluation are identified, Administrative (Performance) Evaluation and Effectiveness (Impact) Evaluation as defined in Appendix A, Glossary of Terms.

**5. Policy.** To be approved, a State's HSP shall contain an overall Statewide evaluation plan, to be included within the discussion under Part III, Overall Statewide Goals.

Administrative (Performance) Evaluation is required for all Program Modules. This administrative evaluation should focus on the contribution of each task to its associated PSP objective. Provision for such administrative evaluations must be made either in the PSPs or in the State's grant agreements with State/local agencies.

Although all impact Program Modules should be subjected to some degree of effectiveness (impact) evaluation, as a minimum the State should perform an in-depth effectiveness evaluation of one (1) selected impact Program Module. The evaluation plan(s) to be used and the criteria for measuring effectiveness will be defined in the Program Module(s).

#### CHAPTER V—REPORTING PROCEDURES

**1. Purpose.** The purpose of this Chapter is to define the reporting requirements of the Highway Safety Plan.

**2. HSP reporting requirements.** Each State shall submit the following reports to the NHTSA Regional Administrator (three copies) and the FHWA Division Administrator (two copies):

a. **Semi-Annual Report of HSP Progress.** The Semi-Annual Report, due June 1, of each year, should address any specific problems associated with implementing the HSP, individual Program Modules and/or PSPs. It should include a discussion of any variances between planned and actual accomplishments and costs, for the first 6 months of the fiscal year and shall include the Title VI reporting requirements contained in paragraph 4.

b. **Annual HSP Report.** This report, due December 1 of each year, will provide a narrative of HSP activities for the preceding fiscal year. It will provide the States with the mechanism for reporting all accomplishments and the degree of attainment of goals and objectives. The overall status of individual Problem Solution Plans, in terms of actual task accomplishments shall be documented on the Problem Solution Plan

Annual Report for Administrative Evaluation (Appendix I). This is the administrative evaluation reporting requirement of the Traffic Safety Programs/Management Information System (TSP/MIS). The results of any effectiveness evaluation(s) and overall Statewide evaluations completed during the report period should be included with the Annual Report, along with the Title VI reporting requirements contained in paragraph 4.

3. *Traffic Safety Programs—Management Information System Data Reporting.* Detailed information on Standards Implementation, Program Information and Statewide Statistics will be submitted on a computer turnaround document (OMB No. 04-R-5638). These documents may be submitted at the same time as the HSP submittal, but not later than the following January 1.

4. *Title VI reporting.* The Semi-Annual Report on HSP Progress, and the Annual HSP Report shall include a specific statement on the status of all affirmative action items by Program Module, as well as an overall status report reflecting any change during the Fiscal Year in the State's Title VI compliance posture as stated in the approved HSP submission.

5. *Minority Business Enterprise Reporting.* To assess the minority business enterprise (MBE) activity occurring within the State and Community Highway Safety Program in accordance with Executive Order 11625, October 13, 1971, DOT Order 4000.7, March 26, 1975, and NHTSA Order 420-1, May 12, 1972, the States shall submit semi-annual reports to the NHTSA Office of Civil Rights (NOA-20) through the Regional Offices. The mid-year report should be submitted to the OCR by the end of April and the cumulative annual report by the end of October. Negative reports are required. The reports shall include the following data for all minority business enterprise and non-white colleges: Name and Address of Contractor/sub Grantee; Date of Contract/Grant; Dollar Amount of Contract/Grant; Purpose of Contract/Grant; Race of Contractor/sub Grantee.<sup>1</sup>

#### APPENDIX A—GLOSSARY OF TERMS

*Administrative (Performance) Evaluation*—Administrative evaluation is concerned with measuring the operational efficiency of task activities as they relate to the accomplishment of established goals and objectives. In measuring actual task activities, it compares them to: (a) the baseline or pre-task levels of the same activities; (b) the targeted levels of activity established for the task; and (c) the planned use of funds.

*Apportionment*—A term which refers to, legislatively described division of Federal funds among the States based on prescribed formulas.

*Appropriation*—An Act of Congress which makes funds available for expenditure with specific limitations as to amount, purpose and duration. Usually, it permits money previously authorized and apportioned to be obligated and payments made. For the highway construction program operating under contract authority, appropriations specify amounts of funds which Congress will make available to liquidate prior obligations.

*Authorization*—Basic substantive legislation which empowers an agency to implement a particular program and which usually established an upper limit on the amount of funds which can be appropriated for the program.

*Countermeasure*—A specific activity, or related activities, designed to contribute to the solution of an identified problem.

*Effectiveness (Impact) Evaluation*—A determination of the extent to which task operations and activity have contributed to the achievement of an objective related to crash involvement. Three aspects of impact evaluation are:

1. Determination of the change in crash involvement.
2. Determination of the relationship between task activities to achieving this change.
3. Determination of the relationship between costs to benefits derived from the task activities and accomplishments.

*Goal*—A long term achievement target which may state incrementally the principal changes or outcomes planned. It relates and expresses in clearly quantified, time framed and measurable terms one or more of the purposes of a Program Module. The goal of an Impact Module is expressed in terms of predicted change in accident fatalities and/or injuries, over time. System Support Module goals relate to the achievement of activities planned to correct identified deficiencies.

*Highway Safety Plan*—This Plan (formerly Comprehensive Plan and Annual Work Program) is the Governor's combined multi-year legislative, organizational, operational, and financial plan, in accordance with uniform standards promulgated by the Secretary, submitted by the State and approved by the Secretary under 23 U.S.C. 402 designed to reduce traffic accidents and deaths, injuries, and property damage.

*Impact Problem*—Highway safety problems that can be related to accidents/fatalities/injury change through the application of countermeasures.

*Milestone*—A major identifiable and recognizable event in a program which can be measured in time. Milestones are essential characteristics of any scheduled activity.

<sup>1</sup>To be coded as: 1—Black, 2—Spanish Surname, 3—American Indian, 4—Oriental, 5—Aleut and Eskimo, 7—Other.

ch denote advancement toward the goals objectives.

**Objective**—A shorter term safety target goal, expressing in clearly quantified, framed and measurable terms the ned levels of program performance to achieved. The objective thus supports a and relates to a problem solution.

**Obligations**—Commitments made by Fed- agencies to pay out money, as distinct n the actual payments or disbursement unds for repayment of obligations in- ed. Generally, obligations are incurred r the enactment of budget authority by Congress.

**Performance Indicator**—A quantifiable sure of the planned results of activity ts (i.e., training, equipment, manpower, facilities) expressed in terms of change vel of activity. They provide the base determining the degree of achievement established objectives.

**Problem Area**—A grouping of impact or ms support problems possessing mon contributory characteristics.

**Problem Identification**—A process of ana- g: (1) Traffic records and other infor- onal resources to isolate impact prob- ; and (2) the existing traffic safety m to isolate systems support problems.

**Problem Solution Plan**—As the basic high- safety programming unit, it specifies objective(s) which relates to the Pro- Module goal, the specific tasks to be rtaken and the estimated costs to be in- ed.

**Program Module**—A planning/program- unit describing an identified problem , proposed solutions and the details for ementation of corrective action.

**Systems Support Problem**—A deficiency in al traffic safety program function, the ection of which may not be directly rel- to a change in accidents, fatalities or injuries.

**Task**—An activity or activities represent- a readily identifiable basic unit of work tified with only one standard area and ble of being scheduled and costed.

State highway safety program if such local highway safety programs are approved by the Governor and are in accordance with the uniform standards promulgated by the Secretary of Transportation under 23 U.S.C. 402.

(c) At least 40 per centum of all Federal funds apportioned to the State under 23 U.S.C. 402 for any fiscal year will be expended by the political subdivisions of the State in carrying out local highway safety programs authorized in accordance with 23 U.S.C. 402(b)(1)(B), except to the extent that this requirement has been waived by the Secretary of Transportation in accordance with 23 U.S.C. 402(b)(2).

(d) The aggregate expenditure of funds of the State and its political subdivisions, exclusive of Federal funds, for highway safety programs will be maintained at a level which does not fall below the average level of such expenditures for Fiscal Years 1965 and 1966.

(e) The State's highway safety program provides for a comprehensive driver training program which includes the elements specified in 23 U.S.C. 402(b)(1)(E).

(f) The State's highway safety program provides adequate and reasonable access for the safe and convenient movement of physically handicapped persons, including those in wheelchairs, across curbs constructed or replaced after July 1, 1976, at all pedestrian crosswalks throughout the State.

(g) The efficient use of energy and the conservation of energy resources have been considered in planning the State's highway safety program.

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(Official Authorized by the Governor)

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(Title)

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(Date)

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## APPENDIX B—STATE OF

**CERTIFICATE OF COMPLIANCE WITH REQUIREMENTS OF 23 U.S.C. 402(b)(1), 92 STAT. 3318 AND E.O. 12185**

hereby certify that:

The Governor is responsible for the inistration of the State's highway ty program through the \_\_\_\_\_.(Name of State Agency) in rdance with \_\_\_\_\_ (Statute, ultive Order, Directive) dated \_\_\_\_\_.

The political subdivisions of the State authorized by \_\_\_\_\_ (Statute, ultive Order, Directive) dated \_\_\_\_\_, arry out local highway safety programs in their jurisdictions as a part of the

## CHAPTER III—ANNUAL WORK PROGRAM

[RESERVED]

SUPPLEMENT C [RESERVED]

SUPPLEMENT D

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID

1. *Purpose.* To implement DOT Order 4600.9A dated December 27, 1972, which, in turn, prescribes procedures applicable to all DOT operating administrations in implementation of Office of Management and Budget (OMB) Circular A-102, Uniform Administrative Requirements for Grant-In-Aid

to State and local Governments, dated October 19, 1971.

2. *Authority.* OMB Circular A-102 requires Federal agencies to implement grant administration standards which will be uniformly employed on a national basis for all grant-in-aid programs. These standards are published as Attachments to this Order. Supplementary guidance regarding these standards is provided below.

3. *Background.* The OMB, in cooperation with the States and ten Federal agencies engaged in domestic grant-in-aid programs, developed Circular A-102 to simplify, standardize, decentralize, and modernize the Federal grant process. Most of the requirements expressed herein parallel the principles, standards, and requirements set forth in existing policy issuances for the State and Community Highway Safety Program. NHSB Notice N462, State and Community Highway Safety Program Principles for Determining Reimbursement to States dated June 7, 1968, and Joint NHTSA/FHWA Order 960-2/HSPM, Transmittal 33, Highway Safety Program Manual Volume 103—Annual Work Program, dated December 29, 1972, are referenced in this Order for interim supplemental guidance. In the event of any conflicting policies this Order has precedence over any and all other Notices or Orders which address Grant-In-Aid requirements. Any conflicting or inconsistent policies reflected in any other Notices or Orders will be changed accordingly at the earliest possible date. The Attachments to this Order are lettered to parallel the Attachments of Circular A-102 for ease of reference.

4. *Responsibilities.* Regional Administrators NHTSA and FHWA, under their delegated authority for administering the State and Community Highway Safety Program standards, are responsible for advising the States of the implementation of these requirements and for periodic evaluation of the effectiveness of the implementation.

5. *Procedure.* Each State is required to establish operating procedures consistent with the applicable standards. Each standard is discussed briefly as to applicability below.

a. *Cash Depositaries.* (Attachment A) The requirement for use of minority banks, when available, is applicable to all advances, whether by check or letter of credit, under the Section 402 grant program. These advances in every instance are also subject to the requirements for deposit in a bank with FDIC insurance coverage, Paragraph 3 of Attachment A.

b. *Bonding and Insurance.* (Attachment B) The minimum requirements for bonding and insurance for construction contracts exceeding \$100,000 in total cost are applicable whenever Federal funds participate in the cost of construction or facility improvement.

c. *Retention and Custodial Requirements for Records.* (Attachment C) These requirements have generally been in effect in the State and Community Highway Safety Program since the inception of the program. All provisions of this standard are applicable. Adequate records management is a primary administrative requisite. Availability of records for audit and public disclosure on request of duly authorized persons is required.

d. *Waiver of "Single" State Agency Requirements.* (Attachment D)<sup>1</sup> The Highway Safety Act of 1970, Section 203(a), amended Section 402(b)(2)(A) of Title 23, United States Code, and precludes the Waiver of "single" State Agency.

e. *Program Income.* (Attachment E) All provisions of this standard are applicable to the State and Community Highway Safety Program. Program income meeting the criteria of the attached standard shall be included in the annual work program for the fiscal year for which programmed, identified as to the highway safety program standard area to which related. When received, program income items shall be reported as negative expenditure items of State program reimbursement vouchers as separate line items, either immediately adjacent to the gross costs reported or on the last line or lines of the voucher as a deduction from total gross program costs. For example, royalties derived from the sale of copyrighted driver education material would be reported in the gross amount identified as program standard 304 as a negative expenditure on the line adjacent to the reported expenditures for the 304 standard area, or as a deduction from a sub-total of the gross program costs, including the cost of reproducing the materials. Appropriate substantiating records and documents shall be maintained within the State system for audit purposes.

f. *Matching Share.* (Attachment F) For purposes of the State and Community Highway Safety Program, States may use their ongoing Highway Safety expenditures of State and local funds for purposes of matching Federal funds on a total program basis. Attachment F provides criteria for defining and computing the matching shares and the valuation of in-kind contributions, if any, of real property, equipment, goods and services directly benefitting the program. Most of these criteria have been established and observed in the operation of the State and Community Highway Safety Program. The item, F. 4.a., *Valuation of volunteer services* is new to the program. It is to be noted that the hours of services must be documented in

<sup>1</sup> Attachment D was not furnished as part of the NHTSA/FHWA Order.

standard manner and the computed rate of services must be consistent with rates paid for similar skills in the labor market.

**Standards for Grantee Financial Management Systems.** (Attachment G) Regional Administrators, under existing delegations of authority, shall make periodic evaluations of the States' financial management systems to determine that as a minimum the standards are met. It is an excellent measure of systems requirements.

**Financial Reporting Requirements.** (Attachment H) The Office of Management Budget has waived this requirement for State and Community Highway Safety Program. It is republished herein for optional use by the States where subgrantees the State may have adopted its use in submitting financial reports on other Federal assistance programs. By recognizing that Annual Work Program concept is an advanced program management concept it was found that mandatory implementation of Attachment H would not have simplified the voucher process from the State level to the Region. Attachment H is geared to individual grant management process described in Attachment M of A-102, from which the State and Community Program is exempt.

**Monitoring and Reporting of Program Performance.** (Attachment I) These provisions have been implemented previously in the "O". However, this emphasizes the responsibility on the grantee management to monitor and report on performance of its activities. It places increased emphasis on management by objectives and comparison of accomplishments with planned goals. Grantors can then place greater reliance on grantee management.

**Grant Payment Requirements.** (Attachment J) Criteria in this attachment establish methods for making grant payments by letter of credit, by Treasury check advance or by reimbursement.

**Budget Revision Procedures.** (Attachment K) Volume 103, Chapter VI, Paragraph 2 sets forth criteria for program revision. A-102, Attachment K is more restrictive in that Federal grantor approval is required of any cumulative cost transfers involving direct cost object classes which exceed \$10,000 or five percent, whichever is later. Volume 103 permits grantees to make revisions among tasks in a subelement (P) without prior approval, provided that the revision is less than ten percent of the total cost of the SEP. Procedures in Volume 103 will be revised to conform with Attachment K. Accordingly, Regional Administrators are responsible for advising the States concerning these requirements effective on receipt of the Order.

**Grant Closeout Procedures.** (Attachment L) This procedure is applicable to the State

and Community Highway Safety Program at the Annual Work Program (AWP) level. Recognizing the AWP as a single grant to the State, the closeout of each SEP is the function of the State. A final report summarizing the completed AWP shall be required in accordance with these procedures.

**m. Standard Forms for Applying for Federal Assistance.** (Attachment M<sup>1</sup>) This procedure is not applicable to the State and Community Highway Safety Program because the AWP does not require grantees to apply for Federal funds on a "project" basis.

**n. Property Management Standards.** (Attachment N) These standards are applicable to the State and Community Highway Safety Program. It is the responsibility of Regional Administrators to review existing property management procedures in the States in light of these standards.

**o. Procurement Standards.** (Attachment O) These standards are applicable to the State and Community Highway Safety Program. Regional Administrators are responsible for determining compliance therewith by the States.

#### ATTACHMENT A

#### UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

#### CASH DEPOSITORIES

1. Except for situations described in 2, 3, and 4, below, no grant program shall:

a. Require physical segregation of cash depositories for Federal grant funds which are provided to a State or local government.

b. Establish any eligibility requirements for cash depositories, in which Federal grant funds are deposited by State or local governments.

2. A separate bank account may be used when payments under letter of credit are made on a "checks-paid" basis in accordance with agreements entered into by a grantee, the Federal Government, and the banking institutions involved.

3. Any moneys advanced to the State or local governments which are determined to be "public moneys" (owned by the Federal Government) must be deposited in a bank with FDIC insurance coverage and the balances exceeding the FDIC coverage must be collaterally secure, as provided for in 12 U.S.C. 265.

4. Consistent with the national goal of expanding the opportunities for minority business enterprises, State and local governments shall be encouraged to use minority banks.

<sup>1</sup> Attachment M was not published as part of the NHTSA/FHWA Order.



ATTACHMENT B

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

**BONDING AND INSURANCE**

1. Except for situations described in 2 and 3, below, Federal grantor agencies shall not impose bonding and insurance requirements, including fidelity bonds, over and above those normally required by the State or local units of government.

2. A State or local unit of government receiving a grant from the Federal Government which requires contracting for construction or facility improvement shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding \$100,000. For contracts exceeding \$100,000, the minimum requirements shall be as follows:

a. *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

3. Where the Federal Government guarantees the payment of money borrowed by the grantee, the Federal grantor agency may, at its discretion, require adequate bonding and insurance if the bonding and insurance requirements of a State or local government are not deemed to be sufficient to protect adequately the interest of the Federal Government.

ATTACHMENT C

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

**RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS**

1. Federal grantor agencies shall not impose record retention requirements over and above those established by the State or local governments, receiving Federal grants

except that financial records, supporting documents, statistical records, and all other records pertinent to a grant program shall be retained for a period of three years, with the following qualifications:

a. The records shall be retained beyond the three-year period if audit findings have not been resolved.

b. Records for nonexpendable property which was acquired with Federal grant funds shall be retained for three years after its final disposition.

c. When grant records are transferred to or maintained by the Federal grantor agency, the three-year retention requirement is not applicable to the grantee.

2. The retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of the submission of the annual expenditure report.

3. State and local governments should be authorized, by the Federal grantor agency if they so desire, to substitute microfilm copies in lieu of original records.

4. The Federal grantor agency shall request transfer of certain records to its custody from State and local governments when it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping a Federal grantor agency may make arrangements with State and local governments to retain any records which are continuously needed for joint use.

5. The head of the Federal grantor agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the State and local governments and their subgrantees which are pertinent to a specific grant program for the purpose of making audits, examination, excerpts, and transcripts.

6. Unless otherwise required by law, no Federal grantor agency will place restrictions on State and local governments which will limit public access to the State and local governments' records except when records must remain confidential for the following reasons:

a. Prevent a clearly unwarranted invasion of personal privacy.

b. Specifically required by Executive order or statute to be kept secret.

c. Commercial or financial information obtained from a person or a firm on a privileged or confidential basis, or a firm on a privileged or confidential basis.

d. Any other information which can be exploited for the purpose of personal gains.

ATTACHMENT E

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

PROGRAM INCOME

Federal grantor agencies shall apply the standards set forth in this Attachment in making State and local government grant-in-aid account for program income related to projects financed in whole or in part with grant funds. For the purpose of this Attachment, program income means gross income earned by the grant-supported activity.

In accordance with Section 203 of the Governmental Cooperation Act of 1968 (P.L. 90-577), the States and any agency instrumentality of a State shall not be accountable for interest earned on grant-in-aid funds, pending their disbursement for program purposes.

Revenues of local government shall be returned to the Federal Government in the amount earned on advances of grant-in-aid in accordance with a decision of the Comptroller General of the United States (Comp. Gen. 289).

Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with Attachment N to this Act pertaining to Property Management.

Royalties received from copyrights and other intangible assets during the grant period shall be retained by the grantee and, in accordance with the grant agreement, be either added to the grant funds already committed to the project or deducted from total project costs for the purpose of determining the net costs which the Federal share of costs will be.

After termination or completion of the grant, the Federal share of royalties in the amount of \$200 received annually shall be returned to the Federal grantor agency in the absence of other specific agreements between the grantor agency and the grantee. The Federal share of royalties shall be computed on the same ratio basis as the Federal share of the total project cost.

All other program income earned during the grant period shall be retained by the grantee and, in accordance with the grant agreement, shall be:

Added to funds committed to the project by the grantor and grantee and be eligible for further eligible program objectives,

Deducted from the total project costs for the purpose of determining the net costs which the Federal share of costs will be.

Federal grantor agencies shall require grantees to record the receipt and ex-

penditure of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant project transactions when such revenues are specifically earmarked for a grant project in accordance with grant agreements.

ATTACHMENT F

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

MATCHING SHARE

1. This Attachment sets forth criteria and procedures for the allowability and evaluation of cash and in-kind contributions made by State and local governments in satisfying matching share requirements of Federal grants.

2. The following definitions apply for the purpose of this Attachment:

a. *Project costs.* Project costs are all necessary charges made by a grantee in accomplishing the objectives of a grant during the grant period. For matching share purposes, project costs are limited to the allowable types of costs as set forth in NHSB Notice N462.

b. *Matching share.* In general, matching share represents that portion of project costs not borne by the Federal Government. Usually, a minimum percentage for matching share is prescribed by program legislation, and matching share requirements are included in the grant agreements.

c. *Cash contributions.* Cash contributions represent the grantee's cash outlay, including the outlay of money contributed to the grantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other grants may be considered as grantee's cash contributions.

d. *In-kind contributions.* In-kind contributions represent the value of noncash contributions provided by (1) the grantee, (2) other public agencies and institutions, and (3) private organizations and individuals. In-kind contributions may consist of charges for real property and equipment, and value of goods and services directly benefiting and specifically identifiable to the grant project. When authorized by Federal legislation, property purchased with Federal funds may be considered as grantee's in-kind contributions.

3. General guidelines for computing matching share are as follows:

a. Matching share may consist of:

(1) Charges incurred by the grantee as project costs. Not all charges require cash outlays during the grant period by the grantee; examples are depreciation and use charges for buildings and equipment.

(2) Project costs financed with cash contributed or donated to the grantee by other public agencies and institutions, and private organizations and individuals.

(3) Project costs represented by services and real or personal property, or use thereof, donated by other public agencies and institutions, and private organizations and individuals.

b. All in-kind contributions shall be accepted as part of the grantee's matching share when such contributions meet the following criteria:

(1) Are identifiable from the grantee's records;

(2) Are not included as contributions for any other federally-assisted program;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives; and

(4) Conform to other provisions of this Attachment.

4. Specific procedures for the grantees in placing the value on in-kind contributions from private organizations and individuals are set forth below:

a. *Valuation of volunteer services.* Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Each hour of volunteered service may be counted as matching share if the service is an integral and necessary part of an approved program.

(1) *Rates for volunteer services.* Rates for volunteers should be consistent with those regular rates paid for similar work in other activities of the State or local government. In cases where the kinds of skills required for the federally-assisted activities are not found in the other activities of the grantee, rates used should be consistent with those paid for similar work in the labor market in which the grantee competes for the kind of services involved.

(2) *Volunteers employed by other organizations.* When an employer other than the grantee furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead cost) provided these services are in the same skill for which the employee is normally paid.

b. *Valuation of materials.* Contributed materials include office supplies, maintenance supplies, or workshop and classroom supplies. Prices assessed to donated materials included in the matching share should be reasonable and should not exceed the cost of the materials to the donor or current market prices, whichever is less, at the time they are charged to the project.

c. *Valuation of donated equipment, buildings, and land, or use of space.*

(1) The method used for charging matching share for donated equipment, buildings,

and land may differ depending upon the purpose of the grant as follows:

(a) If the purpose of the grant is to furnish equipment, buildings, or land to the grantee or otherwise provide a facility, total value of the donated property may be claimed as a matching share.

(b) If the purpose of the grant is to support activities that require the use of equipment, buildings, or land on a temporary part-time basis, depreciation or use charges for equipment and buildings may be made and fair rental charges for land may be made provided that the grantor agency approved the charges.

(2) The value of donated property will be determined as follows:

(a) *Equipment and buildings.* The value of donated equipment or buildings should be based on the donor's cost less depreciation or the current market prices of similar property, whichever is less.

(b) *Land or use of space.* The value of donated equipment or buildings should be established by an independent appraiser (i.e., private realty firm or GSA representatives) and certified by the responsible official of the grantee.

d. *Valuation of other charges.* Other necessary charges incurred specifically for the direct benefit to the grant program on behalf of the grantee may be accepted as matching share provided that they are adequately supported and permissible under the law. Such charges must be reasonable and properly justifiable.

5. The following requirements pertain to the grantee's supporting records for in-kind contribution from private organizations and individuals:

a. The number of hours of volunteer services must be supported by the same methods used by the grantee for its employees.

b. The basis for determining the charges for personal services, material, equipment, buildings, and land must be documented.

#### ATTACHMENT G

#### UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

#### STANDARDS FOR GRANTEE FINANCIAL MANAGEMENT SYSTEMS

1. This Attachment prescribes standards for financial management systems of grant supported activities of State and local governments. Federal grantor agencies shall not impose additional standards on grantees unless specifically provided for in other Attachments to this Circular. However, grantor agencies are encouraged to make suggestions and assist the grantees in establishing or improving financial management systems.

such assistance is needed or request-

grantee financial management systems provide for:

accurate, current, and complete disclosure of the financial results of each grant in accordance with Federal reporting requirements. When a Federal grantor requires reporting on an accrual and the grantee's accounting records are not kept on that basis, the grantee shall develop such information through analysis of the documentation on hand on the basis of best estimates.

Records which identify adequately the receipt and application of funds for grant-supported activities. These records shall include information pertaining to grants, contracts, and authorizations, obligations, unexpended balances, assets, liabilities, outlays, and income.

Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all assets and shall assure that they are properly accounted for authorized purposes.

Comparison of actual with budgeted expenditures for each grant. Also, relation of financial information with performance or activity data, including the production of cost information whenever appropriate and required by the grantor agency.

Procedures to minimize the time elapsing between the transfer of funds from the Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal Government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns from the Treasury through his commercial bank as soon as possible to the time of making disbursements.

Procedures for determining the allowability and allocability of costs in accordance with the provisions of NHB Notice of Decision and Volume 103 of the Highway Manual.

Accounting records which are supported by source documentation.

Audits to be made by the grantee or at the discretion of the grantor to determine, at a minimum, the fiscal integrity of financial transactions, reports, and the compliance with laws, regulations, and administrative requirements. The grantee will schedule such audit at reasonable frequency, usually annual, but not less frequently than once every two years, considering the nature, size, and complexity of the activity.

A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

Grantees shall require subgrantees (recipients of grants which are passed through the grantee) to adopt all of the standards in paragraph 2 above.

# ATTACHMENT H

## UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

### FINANCIAL REPORTING REQUIREMENTS

1. This Attachment prescribes requirements for grantees to report financial information to grantor agencies and to request advances and reimbursement when a letter-of-credit method is not used, and promulgates standard forms incident thereto.

2. The following definitions apply for the purposes of this Attachment:

a. *Accrued expenditures.* Accrued expenditures are the charges incurred by the grantee during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, and other payees; and (3) amounts becoming owed under programs for which no current services or performance are required.

b. *Accrued income.* Accrued income is the earnings during a given period which is a source of funds resulting from (1) services performed by the grantee, (2) goods and other tangible property delivered to purchasers, and (3) amounts becoming owed to the grantee for which no current services or performance are required by the grantee.

c. *Disbursements.* Disbursements are payments in cash or by check.

d. *Federal funds authorized.* Funds authorized represent the total amount of the Federal funds authorized for obligations and establish the ceilings for obligation of Federal funds. This amount may include any authorized carryover of unobligated funds from prior fiscal years.

e. *In-kind contributions.* In-kind contributions represent the value of noncash contributions provided by (1) the grantee, (2) other public agencies and institutions, and (3) private organizations and individuals. In-kind contributions may consist of charges for real property and equipment, and value of goods and services directly benefiting and specifically identifiable to the grant program. When authorized by Federal legislation property purchased with Federal funds may be considered as grantee's in-kind contributions.

f. *Obligations.* Obligations are the amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

g. *Outlays.* Outlays represent charges made to the grant project or program. Outlays can be reported on a cash or accrued expenditure basis.

**h. Program income.** Program income represents earnings by the grantee realized from the grant-supported activities. Such earnings exclude interest income and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, sale of assets purchased with grant funds, and royalties on patents and copyrights. Program income can be reported on a cash or accrued income basis.

**i. Unobligated balance.** The unobligated balance is the portion of the funds authorized by the Federal agency which has not been obligated by the grantee and is determined by deducting the cumulative obligations from the funds authorized.

**j. Unpaid obligations.** Unpaid obligations represent the amount of obligations incurred by the grantee which have not been paid.

3. Only the following forms will be authorized for obtaining financial information from State and local governments for grants-in-aid programs.

**a. Financial Status Report (Exhibit 1).**

(1) Each Federal grantor agency shall require grantees to use the standard Financial Status Report to report the status of funds for all nonconstruction grant programs. The grantor agencies may, however, have the option of not requiring the Financial Status Report when the Request for Advance or Reimbursement (paragraph 4a) is determined to provide adequate information to meet their needs, except that a final Financial Status Report shall be required at the completion of the grant when the Request for Advance or Reimbursement form is used only for advances.

(2) The grantor agency shall prescribe whether the report shall be on a cash or accrual basis. If the grantor agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee should develop such information through an analysis of the documentation on hand or on the basis of best estimates.

(3) The grantor agency shall determine the frequency of the Financial Status Report for each grant program considering the size and complexity of the particular program. However, the report shall not be required more frequently than quarterly or less frequently than annually. Also, a final report shall be required at the completion of the grant.

(4) The original and two copies of the Financial Status Report shall be submitted 30 days after the end of each specified reporting period. In addition, final reports shall be submitted 90 days after the end of the grant period or the completion of the project or program. Extensions to reporting due dates may be granted when requested by the grantee.

**b. Report of Federal Cash Transactions (Exhibit 2).**

(1) When funds are advanced to grantees through letters of credit or with Treasury checks, the Federal grantor agencies shall require each grantee to submit a Report of Federal Cash Transactions. The Federal grantor agency shall use this report to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant or project from the grantees.

(2) Grantor agencies may require for each grant or project the following: (a) Federal cash requirements in the Remarks section of the report.

(3) When practical and deemed necessary, the grantor agencies may require grantees to report in the Remarks section the amount of cash in excess of three days' requirements in the hands of subgrantees or other secondary recipients and to provide short narrative explanations of actions taken by the grantees to reduce the excess balances.

(4) Grantor agencies may accept the identical information from the grantees in a machine-readable format in lieu of the Report of Federal Cash Transactions.

(5) Grantees shall be required to submit the original and two copies of the Report of Federal Cash Transactions no later than 10 working days following the end of each quarter. For those grantees receiving annual grants totalling one million dollars or more, the Federal grantor agencies may require a monthly report.

(6) Grantor agencies may waive the requirement for submission of the Report of Federal Cash Transactions when monthly advances do not exceed \$10,000 per grant provided that such advances are monitored through other forms contained in this Attachment or the grantee's accounting controls are adequate to minimize excess Federal advances.

4. Except as noted below, only the following forms will be authorized for the grantees in requesting advances and reimbursements.

**a. Requests for Advance or Reimbursement (Exhibit 3).**

(1) Each grantor agency shall adopt the Request for Advance or Reimbursement as the standard form for all nonconstruction grant programs when letters of credit or predetermined automatic advance methods are not used. Agencies, however, have the option of using this form for construction programs in lieu of the Outlay Report and Request for Reimbursement for Construction Programs (paragraph 4b).

(2) Grantees shall be authorized to submit requests for advances or reimbursement at least monthly when letters of credit are not used. Grantees shall submit the original and two copies of the Request for Advance or Reimbursement.

**Outlay Report and Request for Reimbursement for Construction Programs (Ex-14).**

Each grantor agency shall adopt the Outlay Report and Request for Reimbursement for Construction Programs as the standard format to be used for requesting reimbursement for construction programs. Grantor agencies may, however, have the option of substituting the Request for Advance or Reimbursement (paragraph 4a) in lieu of this form when the grantor agency determines that the former provides adequate information to meet their needs.

Grantees shall be authorized to submit requests for reimbursement at least monthly when letters of credit are not used. Grantees shall submit the original and two copies of the Outlay Report and Request for Reimbursement for Construction Programs.

When the grantor agencies need additional information in using these forms, the following shall be observed:

When necessary to comply with legislative requirements, grantor agencies shall issue instructions to require grantees to submit such information under the Reimbursement section of the reports.

When necessary to meet specific project needs, grantor agencies shall submit proposed reporting requirements to the Office of Management and Budget for approval under the exception provision of this Order.

The grantor agency, in obtaining information as in paragraphs a and b above, shall also comply with report clearance requirements of the Office of Management and Budget Circular No. A-40, as revised.

Federal grantor agencies are authorized to produce these forms. The forms for reconstruction purposes can be obtained from the Office of Management and Budget and are available both in letter size and legal size. The larger size provides more space for large dollar amounts are involved.

Exhibits 1 through 4 consist of forms which are not published pursuant to 1 CFR 101.11. The forms are available for inspection and copying at those locations specified in 49 CFR, Part 7, Appendixes D and H.

**ATTACHMENT I**

**FORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS**

**MONITORING AND REPORTING OF PROGRAM PERFORMANCE**

This Attachment sets forth the procedures for monitoring and reporting program performance under Federal grants. These procedures are designed to place greater reliance on State and local governments to

manage the day-to-day operations of the grant-supported activities.

2. Grantees shall constantly monitor the performance under grant-supported activities to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity of each grant as set forth in the approved grant application.

3. Grantees shall submit a performance report for each grant which briefly presents the following for each program, function, or activity involved:

a. A comparison of actual accomplishments to the goals established for the period. Where the output of grant programs can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

b. Reasons for slippage in those cases where established goals were not met.

c. Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

4. Grantees shall submit the performance reports to grantor agencies with the Financial Status Reports, in the frequency established by Attachment H of this Order. The grantor agency shall prescribe the frequency with which the performance reports will be submitted with the Request for Advance or Reimbursement when that form is used in lieu of the Financial Status Report. In no case shall the performance reports be required more frequently than quarterly or less frequently than annually.

5. Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the grantee shall inform the grantor agency as soon as the following types of conditions become known:

a. Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

b. Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

6. If any performance review conducted by the grantee discloses the need for change in the budget estimates in accordance with the criteria established in Attachment K to this Order, the grantee shall submit a request for budget revision.

7. The grantor agency shall make site visits as frequently as practicable to:

- a. Review program accomplishments and management control systems.
- b. Provide such technical assistance as may be required.

#### ATTACHMENT J

#### UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

##### GRANT PAYMENT REQUIREMENTS

1. This Attachment establishes required methods of making grant payments to State and local governments that will minimize the time elapsing between the disbursement by a grantee and the transfer of funds from the United States Treasury to the grantee, whether such disbursement occurs prior to or subsequent to the transfer of funds.

2. Grant payments are made to grantees through a letter of credit, an advance by Treasury check, or a reimbursement by Treasury check. The following definitions apply for the purpose of this Attachment:

a. *Letter of credit.* A letter of credit is an instrument certified by an authorized official of a grantor agency which authorizes a grantee to draw funds when needed from the Treasury, through a Federal Reserve Bank and the grantee's commercial bank, in accordance with the provisions of Treasury Circular No. 1075.

b. *Advance by Treasury check.* An advance by Treasury check is a payment made by a Treasury check to a grantee upon its request or through the use of predetermined payment schedules before payments are made by the grantee.

c. *Reimbursement by Treasury check.* A reimbursement by Treasury check is a payment made to a grantee with a Treasury check upon request for reimbursement from the grantee.

3. Except for construction grants for which the letter-of-credit method is optional, the letter-of-credit funding method shall be used by grantor agencies where all of the following conditions exist:

a. When there is or will be a continuing relationship between a grantee and a Federal grantor agency for at least a 12-month period and the total amount of advances to be received within that period from the grantor agency is \$250,000, or more, as prescribed by Treasury Circular No. 1075.

b. When the grantee has established or demonstrated to the grantor the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the grantee.

c. When the grantee's financial management system meets the standards for fund

control and accountability prescribed in Attachment G to this Order, "Standards for Grantee Financial Management Systems."

4. The method of advancing funds by Treasury check shall be used, in accordance with the provisions of Treasury Circular No. 1075, when the grantee meets all of the requirements specified in paragraph 3 above except those in 3.a.

5. The reimbursement by Treasury check method shall be the preferred method when the grantee does not meet the requirements specified in either or both of paragraphs 3.b. and 3.c. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and when the Federal grant assistance constitutes a major portion of the program.

6. Unless otherwise required by law, grantor agencies shall not withhold payments for proper charges made by State and local governments at any time during the grant period unless (a) a grantee has failed to comply with the program objectives, grant award conditions, or Federal reporting requirements, or (b) the grantee is indebted to the United States and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the United States. Under such conditions, the grantor may, upon reasonable notice, inform the grantee that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

7. Attachment H of this Order, "Financial Reporting," provides for the procedures and forms for requesting advances or reimbursements.

#### ATTACHMENT K

#### UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

##### BUDGET REVISION PROCEDURES

1. This Attachment promulgates criteria and procedures to be followed by Federal grantor agencies in requiring grantees to report deviations from grant budgets and to request approvals for budget revisions.

2. The grant budget as used in this Attachment means the approved financial plan for both the Federal and non-Federal shares to carry out the purpose of the grant. This plan is the financial expression of the project or program as approved during the grant application and award process. It should be related to performance for program evaluation purposes whenever appropriate and required by the grantor agency.

For nonconstruction grants, State and local governments shall request prior approvals promptly from grantor agencies for budget revisions whenever:

The revision results from changes in scope or the objective of the grant-supported program.

The revision indicates the need for additional Federal funding.

The grant budget is over \$100,000 and cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed \$10,000, or 10 percent of the grant budget, whichever is greater. The same criteria apply to the cumulative amount of transfers among programs, functions, and activities when budgeted separately for a grant, except that the grantor agency shall permit no transfer which would cause any Federal appropriation or part thereof, to be used for purposes other than those intended.

The grant budget is \$100,000, or less, the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed five percent of the grant budget. The same criteria apply to the cumulative amount of transfers among programs, functions, and activities when budgeted separately for a grant, except that the grantor agency shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

The revisions involve the transfer of amounts budgeted for indirect costs to other increases in direct costs.

The revisions pertain to the addition of amounts requiring approval in accordance with provisions Highway Safety Program Manual, Volume 103.

All other changes to nonconstruction budgets, except for the changes described in paragraph 6, do not require approval. These changes include (a) the use of grantee funds in furtherance of program objectives over and above the grantee minimum share included in the approved grant agreement and (b) the transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

For construction grants, State and local governments shall request prior approvals promptly from grantor agencies for budget revisions whenever:

The revision results from changes in scope or the objective of the grant-supported programs.

The revision increases the budgeted amounts of Federal funds needed to complete the project.

When a grantor agency awards a grant which provides support for both construction and nonconstruction work, the grantor agency may require the grantee to request prior approval from the grantor agency

before making any fund or budget transfers between the two types of work supported.

7. For both construction and nonconstruction grants, grantor agencies shall require State and local governments to notify the grantor agency promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the grantee by more than \$5,000 or 5 percent of the Federal grant, whichever is greater. This notification will not be required when applications for additional funding are submitted for continuing grants.

8. When requesting approval for budget revisions, grantees shall use the budget forms which were used in the grant application. However, grantees may request by letter the approvals required by the provisions of Highway Safety Program Manual, Volume 103.

9. Within 30 days from the date of receipt of the request for budget revisions, grantor agencies shall review the request and notify the grantee whether or not the budget revisions have been approved. If the revision is still under consideration at the end of 30 days, the grantor shall inform the grantee in writing as to when the grantee may expect the decision.

#### ATTACHMENT L

#### UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

#### GRANT CLOSEOUT PROCEDURES

1. This Attachment prescribes uniform closeout procedures for Federal grants to State and local governments.

2. The following definitions shall apply for the purpose of this Attachment:

a. *Grant closeout.* The closeout of a grant is the process by which a Federal grantor agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the grantor.

b. *Date of completion.* The date when all work under a grant is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends.

c. *Termination.* The termination of a grant means the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the date of completion.

d. *Suspension.* The suspension of a grant is an action by a Federal grantor agency which temporarily suspends Federal assistance under the grant pending corrective action by the grantee or pending a decision to terminate the grant by the grantor agency.

e. *Disallowed costs.* Disallowed costs are those charges to a grant which the grantor



agency or its representative determines to be unallowable. NHSB Notice N462, dated June 7, 1968.

3. All Federal grantor agencies shall establish grant closeout procedures which include the following requirements:

a. Upon request, the Federal grantor agency shall make prompt payments to a grantee for allowable reimbursable costs under the grant being closed out.

b. The grantee shall immediately refund to the grantor agency any unencumbered balance of cash advanced to the grantee.

c. The grantor agency shall obtain from the grantee within 90 days after the date of completion of the grant all financial performance, and other reports required as a condition of the grant. The agency may grant extensions when requested by the grantee.

d. The grantor agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.

e. The grantee shall account for any property acquired with grant funds, or received from the Government in accordance with the provisions of Attachment N to this Order.

f. In the event a final audit has not been performed prior to the closeout of the grant, the grantor agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

4. All Federal grantor agencies shall provide procedures to be followed when a grantee has failed to comply with the grant award stipulations, standards, or conditions. When that occurs, the grantor agency may, on reasonable notice to the grantee, suspend the grant, and withhold further payments, or prohibit the grantee from incurring additional obligations of grant funds, pending corrective action by the grantee or a decision to terminate in accordance with paragraph 5.a. The grantor agency may allow all necessary and proper costs which the grantee could not reasonably avoid during the period of suspension provided that they meet the provisions of NHSB Notice N462.

5. Subject to the provisions of paragraph 7 of the basic Circular of which this Attachment references, all Federal grantor agencies shall provide for the systematic settlement of terminated grants including the following:

a. *Termination for cause.* The grantor agency may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The grantor agency shall promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective

date. Payments made to grantees or received by the grantor agencies under grants terminated for cause shall be in accord with the legal rights and liabilities of the parties.

b. *Termination for convenience.* The grantor agency or grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations on the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Federal agency shall allow full credit to the grantee for its Federal share of the noncancellable obligations, properly incurred by the grantee prior to termination.

#### ATTACHMENT M—[RESERVED]

#### ATTACHMENT N

#### UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

#### PROPERTY MANAGEMENT STANDARDS

1. This Attachment prescribes uniform standards governing the utilization and disposition of property furnished by the Federal Government or acquired in whole or in part with Federal funds by State and local governments. Federal grantor agencies shall require State and local governments to observe these standards under grants from the Federal Government and shall not impose additional requirements unless specifically required by Federal law. The grantees shall be authorized to use their own property management standards and procedures insofar as the provisions of this Attachment are included.

2. The following definitions apply for the purpose of this Attachment:

a. *Real property.* Real property means land, land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

b. *Personal property.* Personal property means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions and copyrights.

c. *Nonexpendable personal property.* Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition

ld at least include all tangible personal property as defined above.

**Expendable personal property.** Expendable personal property refers to all tangible personal property other than nonexpendable property.

**Excess property.** Excess property means property under the control of any Federal agency which, as determined by the head of the agency, is no longer required for its needs. Each Federal grantor agency shall prescribe requirements for grantees concerning the use of real property funded partly or wholly by the Federal Government. Unless otherwise provided by statute, such requirements, as a minimum, shall contain the following:

The grantee shall use the real property for the authorized purpose of the original grant as long as needed.

The grantee shall obtain approval by the grantor agency for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor.

When the real property is no longer needed as provided in a. and b., above, the grantee shall return all real property furnished or purchased wholly with Federal grant funds to the control of the Federal grantor agency. In the case of property purchased in part with Federal grant funds, the grantee may be permitted to take title to the property.

Federal interest therein upon compensating the Federal Government for its fair share of the property. The Federal share of the property shall be the amount computed by applying the percentage of the Federal participation in the total cost of the grant program for which the property was acquired to the current fair market value of the property.

Standards and procedures governing ownership, use, and disposition of nonexpendable personal property furnished by the Federal Government or acquired with Federal funds are set forth below:

**Nonexpendable personal property acquired with Federal funds.** When nonexpendable personal property is acquired by a grantee wholly or in part with Federal funds, title will not be taken by the Federal Government except as provided in paragraph 4a(4), but shall be vested in the grantee subject to the following restrictions on use and disposition of the property:

(1) The grantee shall retain the property acquired with Federal funds in the grant program as long as there is a need for the property to accomplish the purpose of the grant program whether or not the program continues to be supported by Federal funds. When there is no longer a need for the

property to accomplish the purpose of the grant program, the grantee shall use the property in connection with other Federal grants it has received in the following order of priority:

(a) Other grants of the same Federal grantor agency needing the property.

(b) Grants of other Federal agencies needing the property.

(2) When the grantee no longer has need for the property in any of its Federal grant programs, the property may be used for its own official activities in accordance with the following standards:

(a) *Nonexpendable property with an acquisition cost of less than \$500 and used four years or more.* The grantee may use the property for its own official activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(b) *All other nonexpendable property.* The grantee may retain the property for its own use provided that a fair compensation is made to the original grantor agency for the latter's share of the property. The amount of compensation shall be computed by applying the percentage of Federal participation in the grant program to the current fair market value of the property.

(3) If the grantee has no need for the property, disposition of the property shall be made as follows:

(a) *Nonexpendable property with an acquisition cost of \$1,000 or less.* Except for that property which meets the criteria of (2)(a) above, the grantee shall sell the property and reimburse the Federal grantor agency an amount which is computed in accordance with (iii) below.

(b) *Nonexpendable property with an acquisition cost of over \$1,000.* The grantee shall request disposition instructions from the grantor agency. The Federal agency shall determine whether the property can be used to meet the agency's requirement. If no requirement exists within that agency, the availability of the property shall be reported to the General Services Administration (GSA) by the Federal agency to determine whether a requirement for the property exists in other Federal agencies. The Federal grantor agency shall issue instructions to the grantee within 120 days and the following procedures shall govern:

(i) If the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee's participation in the grant program to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(ii) If the grantee is instructed to otherwise dispose of the property, he shall be re-

imbursed by the Federal grantor agency for such costs incurred in its disposition.

(iii) If disposition instructions are not issued within 120 days after reporting, the grantee shall sell the property and reimburse the Federal grantor agency an amount which is computed by applying the percentage of Federal participation in the grant program to the sales proceeds. Further, the grantee shall be permitted to retain \$100 or 10 percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(4) Where the grantor agency determines that property with an acquisition cost of \$1,000 or more and financed solely with Federal funds is unique, difficult, or costly to replace, it may reserve title to such property, subject to the following provisions:

(a) The property shall be appropriately identified in the grant agreement or otherwise made known to the grantee.

(b) The grantor agency shall issue disposition instructions within 120 days after the completion of the need for the property under the Federal grant for which it was acquired. If the grantor agency fails to issue disposition instructions within 120 days, the grantee shall apply the standards of 4a(1), 4a(2)(b), and 4a(3)(b).

b. *Federally-owned nonexpendable personal property.* Unless statutory authority to transfer title has been granted to an agency, title to Federally-owned property (property to which the Federal Government retains title including excess property made available by the Federal grantor agencies to grantees) remains vested by law in the Federal Government. Upon termination of the grant or need for the property, such property shall be reported to the grantor agency for further agency utilization or, if appropriate, for reporting to the General Services Administration for other Federal agency utilization. Appropriate disposition instructions will be issued to the grantee after completion of Federal agency review.

5. The grantees' property management standards for nonexpendable personal property shall also include the following procedural requirements:

a. Property records shall be maintained accurately and provide for: a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage of Federal funds used in the purchase of property; location, use, and condition of the property; and ultimate disposition data including sales price or the method used to determine current fair market value if the grantee reimburses the grantor agency for its share.

b. A physical inventory of property shall be taken and the results reconciled with the property records at least once every two

years to verify the existence, current utilization, and continued need for the property.

c. A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.

d. Adequate maintenance procedures shall be implemented to keep the property in good condition.

e. Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

6. When the total inventory value of any unused expendable personal property exceeds \$500 at the expiration of need for any Federal grant purposes, the grantee may retain the property or sell the property as long as he compensates the Federal Government for its share in the cost. The amount of compensation shall be computed in accordance with 4a(2)(b).

7. Specific standards for control of intangible property are provided as follows:

a. If any program produces patents, patent rights, processes, or inventions, the course of work aided by a Federal grant, such fact shall be promptly and fully reported to the grantor agency. The grantor agency shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery—including rights under any patent issued thereon—shall be disposed of and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and Statement of Government Patent Policy as printed in 36 FR 16889).

b. Where the grant results in a book or other copyrightable material, the author or grantee is free to copyright the work, but the Federal grantor agency reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

#### ATTACHMENT C

#### UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

##### Procurement Standards

1. This Attachment provides standards for use by the State and local governments in establishing procedures for the procurement of supplies, equipment, construction, and other services with Federal grant funds. These standards are furnished to insure that such materials and services are of

ed in an effective manner and in compliance with the provisions of applicable Federal law and Executive orders. No additional requirements shall be imposed by the Federal agencies upon the grantees unless specifically required by Federal law or Executive orders.

The Standards contained in this Attachment do not relieve the grantee of the contractual responsibilities arising under its contracts. The grantee is the responsible authority, without recourse to the grantor agency regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of a grant. This includes but is not limited to: disputes, claims, protests of award, source evaluation or other matters of contractual nature. Matters concerning interpretation of law are to be referred to such authority, State, or Federal authority as may have proper jurisdiction.

Grantees may use their own procurement regulations which reflect applicable State and local law, rules and regulations provided that procurements made with Federal grant funds adhere to the standards set forth as follows:

The grantee shall maintain a code of standards of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Federal grant funds. Grantee's officers, employees or agents, shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible under State or local law, rules or regulations, the standards shall provide for penalties, sanctions, or other disciplinary actions to be levied for violations of such standards by the grantee officers, employees, or agents, or by contractors or their agents.

All procurement transactions regardless of whether negotiated or advertised without regard to dollar value shall be conducted in a manner so as to provide maximum open and free competition. The grantee should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or inhibit competition or otherwise restrain trade.

The grantee shall establish procurement procedures which provide for, as a minimum, the following procedural requirements:

1) Proposed procurement actions shall be reviewed by grantee officials to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

2) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical require-

ments for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of the procurement, and when so used the specific features of the named brand which must be met by offerors should be clearly specified.

(3) Positive efforts shall be made by the grantees to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed utilizing Federal grant funds.

(4) The type of procuring instruments used (i.e., fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, etc.), shall be appropriate for the particular procurement and for promoting the best interest of the grant program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(5) Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to paragraph (6) below is necessary to accomplish sound procurement. However, procurements of \$2,500 or less need not be so advertised unless otherwise required by State or local law or regulations. Where such advertised bids are obtained the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the grantee, price and other factors considered. (Factors such as discounts, transportation costs, taxes may be considered in determining the lowest bid.) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the grantee. Any or all bids may be rejected when it is in the grantee's interest to do so, and such rejections are in accordance with applicable State and local law, rules, and regulations.

(6) Procurements may be negotiated if it is impracticable and unfeasible to use formal advertising. Generally, procurements may be negotiated by the grantee if:

(a) The public exigency will not permit the delay incident to advertising;

(b) The material or service to be procured is available from only one person or firm; (All contemplated sole source procurements where the aggregate expenditure is expected to exceed \$5,000 shall be referred to the grantor agency for prior approval.)

(c) The aggregate amount involved does not exceed \$2,500;

(d) The contract is for personal or professional services, or for any service to be ren-

dered by a university, college, or other educational institutions;

(e) The material or services are to be procured and used outside the limits of the United States and its possessions;

(f) No acceptable bids have been received after formal advertising;

(g) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment for manufacture;

(h) Otherwise authorized by law, rules, or regulations.

Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(7) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

(8) Procurement records or files for purchases in amounts in excess of \$2,500 shall provide at least the following pertinent information: justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiated.

(9) A system for contract administration shall be maintained to assure contractor conformance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely followup of all purchases.

4. The grantee shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts and subgrants:

a. Contracts shall contain such contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

b. All contracts, amounts for which are in excess of \$2,500, shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated be-

cause of circumstances beyond the control of the contractor.

c. In all contracts for *construction* or facility improvement awarded in excess of \$100,000, grantees shall observe the bonding requirements provided in Attachment B to this Circular.

d. All contracts and subgrants in excess of \$10,000 shall include provisions for compliance with Executive Order No. 11246, entitled, "Equal Employment Opportunity," as supplemented in Department of Labor Regulations (41 CFR, Part 60). Each contractor or subgrantee shall be required to have an affirmative action plan which declares that it does not discriminate on the basis of race, color, religion, creed, national origin, sex, and age and which specifies goals and targets to assure the implementation of the plan. The grantee shall establish procedures to assure compliance with this requirement by contractors or subgrantees and to assure that suspected or reported violations are promptly investigated.

e. All contracts and subgrants for *construction* or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency.

f. When required by the Federal grant program legislation, all *construction* contracts awarded by grantees and subgrantees in excess of \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor Regulations (29 CFR, Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the grantor agency.

g. Where applicable, all contracts awarded by grantees and subgrantees in excess of \$2,000 for *construction* contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compl-

ce with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, r 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and standard work week of 40 hours. Work in excess of the standard workday or work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Contracts or agreements, the principal purpose of which is to create, develop, or improve products, processes or methods; or exploration into fields which directly concern public health, safety, or welfare; or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Federal grantor agency and the grantee. The contractor shall be advised as to the source of additional information regarding these matters.

All negotiated contracts (except those of \$500 or less awarded by grantees) shall include a provision to the effect that the grantee, the Federal grantor agency, the Comptroller General of the United States, any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific contract program for the purpose of making audit, examination, excerpts, and transcriptions.

Each contract of an amount in excess of \$500 or less) awarded by grantees shall also provide that the recipient will comply with applicable regulations and standards of the Cost of Living Council in establishing wages and prices. The provision shall advise the recipient that submission of a bid or offer or the submittal of an invoice or voucher for property, goods, or services furnished under a contract or agreement with the grantee shall constitute a certification

by him that amounts to be paid do not exceed maximum allowable levels authorized by the Cost of Living Council regulations or standards. Violations shall be reported to the grantor agency and the local Internal Revenue Service field office.

k. Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970. Violations shall be reported to the grantor agency and the Regional Office of the Environmental Protection Agency.

#### SUPPLEMENT E

##### ENVIRONMENTAL IMPACT REVIEW REQUIREMENTS FOR ANNUAL STATE AND COMMUNITY HIGHWAY SAFETY WORK PROGRAMS (AWPs)

1. *Purpose:* The purpose of this directive is to implement Sections 102(2)(A) and 102(2)(B) of the National Environmental Policy Act of 1969 (P.L. 91-190; 42 U.S.C. 4332(2)(A) and (2)(C)), Section 4(f) of the Department of Transportation Act of 1966 (P.L. 89-670; 49 U.S.C. 1653(f)), Guidelines of the Council on Environmental Quality (40 CFR Part 1500), and DOT Draft Order 5610.1B (38 FR 30215, November 1, 1973) as they pertain to the State and Community Highway Safety Programs contained in State Annual Work Programs (AWPs).

2. *Background:* a. The Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA) have published Notices of Proposed Rule Making pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91-190; 42 U.S.C. 4332(2)(C)), Executive Order 11514 (35 FR 4247), and Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500). The FHWA Notice was published in 38 FR 30193 (November 1, 1973), and the NHTSA Notice was published in 38 FR 35018 (December 21, 1973). A copy of each Notice is attached and should be used with this Order pending their final issuance in 23 CFR Part 771 (for FHWA) and 49 CFR Part 520 (for NHTSA). These Notices and this Order taken together provide a process for determining the level of importance and environmental significance of major Federal actions proposed to be undertaken by the respective Administrations, and outline procedures for processing the necessary environmental impact or related statements.

b. DOT Draft Order 5610.1B has not been issued in its final form as of the date of the issuance of the joint Order.

3. *Effect on Other Directives:* This Order supersedes joint memorandum "Interim Guidelines for AWP Environmental Impact Reviews, FY '73" dated April 14, 1972, and

the first paragraph of joint memorandum "Annual Work Program Approval" dated July 2, 1973.

4. *Policy.* It is the policy of FHWA and NHTSA that the Offices having joint AWP approval authority assess possible environmental impacts of the AWP before authorization is given to proceed with any tasks.

5. *Definitions.* All terms used in this Order are defined either in 23 CFR Part 771 or 49 CFR Part 520, and are used as defined in those parts.

6. *Responsibility and Procedures:* a. Each Regional Administrator or his designee, in consultation with the Governor's Representative, shall review that portion of the AWP for which he is responsible to determine the environmental processing required for the proposed AWP tasks, in accordance with the guidelines and procedures established in 23 CFR Part 771 or 49 CFR Part 520, as appropriate.

(1) Authorization to proceed may be granted for all AWP tasks which are not major Federal actions significantly affecting the quality of the human environment. Such tasks require no further environmental processing.

(2) Authorization to proceed with tasks which are identified as major Federal actions which could significantly affect the quality of the human environment may be granted only to the extent necessary to gather information to determine whether a draft environmental impact statement (DEIS) or a negative declaration is appropriate.

(3) Authorization to proceed under paragraphs 6(a)(1) and 6(a)(2) must be granted jointly in accordance with Highway Safety Program Manual Volume 103, Chapter III, paragraph 4.

b. Any DEIS or negative declaration as the case requires, will be prepared and processed for each major Federal action which could significantly affect the quality of human environment by the responsible Regional Administrator or his designee in accordance with 23 CFR Part 771 for FHWA Standards, or 49 CFR Part 520 for NHTSA Standards.

c. Following the completion of a negative declaration or the processing of a final environmental impact statement, the responsible Regional Administrator or his designee may authorize the State to proceed.

The attachment to this Order was a reprint of proposed Part 771 of Title 23 of the Code of Federal Regulations (38 FR 30193).

#### SUPPLEMENT F

##### DISTRIBUTION AND RELEASE OF AUDIT REPORTS ON STATE PROGRAM ADMINISTRATION

1. *Purpose:* This Order transmits policy and establishes procedures for the distribution and release audit reports on State ad-

ministration of Federal funds for highway safety purposes.

2. *Background:* The Office of Management and Budget (OMB) is seeking to improve Federal/State relationships by encouraging Federal agencies to expand their exchange of information with State and local governments. In this regard, State legislative auditors and internal audit organizations have indicated a specific interest in obtaining copies of Federal Government audit reports relative to State responsibilities for administering Federal Assistance programs. An increase in the frequency of State requests for Federal Government audit information of this type is anticipated.

3. *Policy:* a. It is NHTSA/FHWA policy to release audit reports and to assure dissemination of audit report information to the extent necessary for the development and improvement of State and Community Highway Safety Programs. Recognizing that the primary responsibility for State and Community Highway Safety Programs funded in whole or in part by Federal Section 402 funds, rests with the Governor's Representative for highway safety, all audit reports will be fully coordinated with his office preliminary to any release of the audit report to other than the audited State agency.

b. DOT Order 2910.1A, dated August 13, 1971 (Subject: Distribution of Departmental Audit Reports of Audit Examinations of Federal Assistance Programs and Activities) establishes the following DOT policy:

Departmental audit reports concerning State and local government activities under DOT grant-in-aid programs shall be furnished to State and local government audit organizations and officials, as requested. Requested reports should be available for release whenever coordination of the contents with appropriate DOT program officials and grantee organizations has been completed. However, no audit report will be withheld from a requester for "coordination" or "staffing" reasons for more than 60 days after the report has been "issued" in final form.

If a requested audit report contains information deemed to be of a sensitive nature and the Administrator determines that its release would be detrimental to the objectives of this Order, such parts of a report may be withheld from a requester with the prior approval of the Secretary. Requests for approval to withhold parts of a requested report should be submitted to the Secretary through the Assistant Secretary for Administration, together with the appropriate justification.

4. *Definitions:* For purposes of this instruction, the following definition applies:

*Audit Report* is the final report issued by and for the Federal Government relating to

State operations audited. This definition does not include:

- 1. *Interim advisory memorandums* issued to keep Regional Offices and headquarters officials currently apprised of audit findings before issuance of the audit report.
- 2. *"Auditor's Statements"* or similar audit clearance documents prepared for specific corrective actions, or
- 3. *Audit reports related to audits performed for other Federal agencies or State organizations.*

**Responsibilities:**

- a. **NHTSA** (1) NHTSA Regional Administrators are responsible for receiving and evaluating audit reports, initiating proper coordination, initiating corrective action, and releasing (or withholding an exception basis with the prior approval of the Secretary) audit reports on State and Community Highway Safety Programs.
- 2) The NHTSA Regional Administrator shall coordinate actions on audit reports with the responsible FHWA Regional Administrator, and shall obtain his concurrence on matters affecting the FHWA standards.
- 3) The Director, Office of Management Systems, NHTSA is responsible for the effective coordination of management actions based on audit report findings and recommendations including headquarters' coordination of all requests for waiver to the Secretary.

**FHWA.** (1) FHWA Regional Administrators are responsible for establishing the FHWA position on those portions of audit reports affecting standard areas administered by the FHWA.

2) The FHWA position, as established by the Regional Administrator, shall be transmitted to the counterpart NHTSA Regional Administrator within 30 days from the date of issuance of the final audit report which will provide data for use in the development of followup action with the audited agency.

**Implementation.** As the first step in implementation, NHTSA Regional Administrators shall discuss the audit release policy with each Governor's Representative to establish a common understanding on procedures for processing audit reports, including provisions for (a) advising State and local organizations of audit findings prior to their issuance in the audit report and (b) coordinating the reports prior to NHTSA's release to State agencies.

**Audit Close-out:** An audit close-out conference is held between the FHWA auditors and the audited State agency prior to issuance of a final audit report. Attendance by Regional Administrators or their staffs is encouraged so as to facilitate timely corrective action when necessary. This will also permit the audit report to reflect corrective action taken and in progress.

**Distribution of Audit Reports:** a. Audit reports covering the State and Community

Highway Safety Program will be sent to the NHTSA Regional Administrator.

b. Only NHTSA Regional Administrators, with concurrence of the FHWA Regional Administrators, may authorize external release of audit reports on the State and Community Highway Safety Program.

c. If, in the opinion of responsible FHWA audit staff, there is information in the audit report that should not be released to the audited State organization and/or other State agencies, a statement setting forth their reasons for recommending withholding the information will be included in the memorandum transmitting the report to the NHTSA Regional Administrator.

d. Copies of audit reports will be further distributed within NHTSA and FHWA by the auditors in accordance with established distribution procedures.

e. In transmitting audit reports, the FHWA auditors will include the following statement of responsibility:

In accordance with NHTSA/FHWA policy, we are distributing copies of this report as noted below, with the understanding that it should not be released externally without the prior approval of the NHTSA Regional Administrator.

**9. Release:** The following instructions pertain to the actions of the NHTSA Regional Administrators relative to the release of audit reports. These instructions primarily concern release to the audited State agency, and State and local audit agencies as covered by DOT policy. Requests from other Government sources should be evaluated by the NHTSA Regional Administrators in accordance with that policy.

a. **Audited State Agency**—All audit reports will be fully coordinated with the audited State organization before their release to a State audit agency. In addition, in accordance with Paragraph 5.a.(2) of this Order, the report will be coordinated with the FHWA Regional Administrator. The NHTSA Regional Administrator shall release the report to the audited State organization as soon as possible, which may be either before or after administrative disposition is taken. Alternatives in this regard are as follows:

(1) If the audit report contains no sensitive information, it may be released immediately to the audited State organization, advising that the report is being reviewed for administrative disposition. Reports of subsequent actions taken should be transmitted to the audited organization as they occur.

(2) If administrative disposition can be accomplished within ten (10) workdays from receipt of the report, such action should be taken and reported to the audited organization in the memorandum transmitting the report.



b. *Audit Agencies*—On request, the NHTSA Regional Administrator shall release audit reports to a State or local audit agency in accordance with the following guidelines:

(1) The NHTSA Regional Administrator shall assure that the audit report has been fully coordinated with the audited State organization and the FHWA Regional Administrator prior to its release.

(2) Audit reports which are furnished to authorized officials of State and local audit agencies shall not be subject to NHTSA/FHWA restrictions as to use. However, the transmittal letter accompanying the report should indicate that the report is submitted for official use of the requesting authorized State official.

(3) The audit report release package shall include the audit report and NHTSA/FHWA position or disposition statements as appropriate. On matters involving the FHWA, the coordinated position statement shall be released with the report. On matters involving only the NHTSA, a position statement is optional. It is expected, however, that the NHTSA Regional Administrator will provide the requesting agency with any information which would show action taken by the State to correct conditions disclosed in the audit report.

(4) In no case may the requested release of an audit report be delayed for more than 60 days from the date the report was issued in final form except where a waiver from release has been requested from the Secretary of Transportation.

(5) If the NHTSA Regional Administrator believes a waiver from release may be warranted, a waiver should be requested immediately, to permit adequate time for headquarters review. Release of the report may be delayed beyond 60 days in those cases where a request for waiver is still awaiting DOT resolution.

(6) Documentation of the release (transmitting memorandum and appropriate background information) must be retained for official file purposes in the NHTSA Regional Office. A copy should also be sent to the FHWA Regional Administrator.

#### 10. *Withholding Requested Audit Reports:*

a. If a requested audit report contains information of a sensitive nature, the NHTSA Regional Administrator may initiate a request for waiver from release of the audit report or parts thereof. *A report may only be withheld with the prior approval of the Secretary of Transportation.*

b. The request for waiver should be prepared by the NHTSA Regional Administrator, coordinated with the FHWA Regional Administrator, as required, and submitted to the NHTSA Administrator thru the Associate Administrator for Administration. Specific content requirements follow:

(1) The request for waiver should be transmitted as a draft memorandum addressed to the Secretary, through the Assistant Secretary for Administration, for the signature of the NHTSA Administrator. The draft memorandum should contain the following:

(a) A concise statement of the reasons for the request for a waiver;

(b) A brief statement on the history of prior requests for audit reports by the State audit agency and the disposition of such requests, if any;

(c) Comments on the expected consequence of either releasing or withholding the report; and

(d) Any additional information which would provide a basis for the Secretary's decision on withholding the report.

(2) The request for waiver should be transmitted by memorandum to the Associate Administrator for Administration. The memorandum transmitting the request need not repeat information contained in the draft memorandum to the Secretary, but may include additional information relating to the requested waiver and/or amplifying on the proposed memorandum. A copy of the requested audit report should accompany the memorandum to NHTSA headquarters.

(3) The entire package should be coordinated with the FHWA Regional Administrator as applicable prior to its transmittal to NHTSA, Washington (see Paragraph 5.a.(2) above). In addition, two copies of the package must be transmitted to the FHWA Regional Administrator concurrent with its transmittal to NHTSA headquarters.

c. The Associate Administrator for Administration will review the request and take appropriate action based upon the recommendations of the Director, Office of Management Systems. All requests for waiver shall be coordinated with appropriate FHWA headquarters elements. The appropriate Regional Administrator will be kept informed of the status of the request and shall be provided with copies of all pertinent documents.

#### SUPPLEMENT G

#### DISPOSITION OF EXTERNAL AUDIT FINDINGS RELATED TO STATE AND COMMUNITY HIGHWAY SAFETY PROGRAM MANAGEMENT

1. *Purpose:* This Order prescribes policy and procedures for (1) coordinating external audit reports on State Program Management, (2) timely and systematic followup on audit report findings and recommendations and (3) periodic reporting to headquarters on status and action taken pursuant to external audit findings.

**Scope:** This Order applies to external reports on State and Community Highway Safety Program Management.

**References:** a. DOT Order 2920.1 dated October 17, 1971 (Subject: Audit Service Department of Transportation).  
b. Joint NHTSA/FHWA Order 291-1/5-7 May 2, 1972 (Distribution and Release of Reports on State Program Administration).

**OMB Circular A-73** dated August 4, 1971, Subject: Audit of Federal Grants-in-Aid to State and Local Governments).

**Background:** OMB Circular A-73 states that Federal agencies are responsible for providing adequate audit coverage of grant programs, as a constructive aid in determining whether Federal funds have been expended effectively and in a manner consistent with related Federal laws, program objectives, and underlying agreements. The Circular provides that "... audit policies of all agencies will provide for relying, to the maximum extent feasible, on internal or independent audits performed at the State or local level ...". In implementing the requirements of this Circular, a system must be developed to assure that State audits are effective, and that timely follow-up is provided on all deficiencies cited in reports. The procedures and requirements of this Order constitute a basic part of the system.

**Policy:** It is the policy of the NHTSA and FHWA that all external audit reports and recommendations be resolved in a timely manner, and that management actions be fully documented based upon the findings input of all interested parties.

**Responsibilities:** Primary responsibility for followup to external audit reports on State and Community Highway Safety Program Management rests with the NHTSA and FHWA Regional Administrators. However, the resolution of audit findings may require input from numerous elements both at the regional and headquarters level.

**NHTSA Regional Administrators.** (1) Provide full coordination of all external audit reports with the appropriate Government Representative in order to develop and implement appropriate management actions based upon audit findings.

(2) Coordinate actions on audit findings with the responsible FHWA Regional Administrator, and obtain his concurrence on matters affecting the FHWA standards.

(3) Provide a formal system for documenting all actions taken as a result of audit findings and have such documentation available for review by authorized Federal officials; e.g., DOT, GAO.

(4) Advise the Director, Office of Management Systems, N48-40, NHTSA, on the status of actions taken with respect to each audit finding or recommendation. Such reports shall be submitted within 15 days of

the end of the quarter in which the final audit report is received. Form HS-247, Audit and Administrative Review Finding Status Record, which is discussed in paragraph 7 of this Order, shall be used for these reports.

**b. FHWA Regional Administrators.** (1) FHWA Regional Administrators are responsible for establishing the FHWA position on those portions of audit reports affecting standard areas administered by the FHWA, assuring that appropriate action is taken, and maintaining appropriate files.

(2) The FHWA position, as established by the Regional Administrator, shall be transmitted to the counterpart NHTSA Regional Administrator within 30 days from the date of issuance of the final audit report.

**c. NHTSA Headquarter's Officials.** (1) The Director, Office of Management Systems, serves as the central coordination point for NHTSA headquarters action on audit matters, and is directly responsible for assuring timely management action based on audit report findings and recommendations. In carrying out this responsibility the Director, Office of Management Systems, NHTSA shall:

(a) Maintain central files of all audit reports to include a record of the status or disposition of all findings.

(b) Assure appropriate headquarter's action with respect to audit findings.

(c) Review and coordinate requests by NHTSA Regional Administrators for advice and/or assistance on audit findings and related audit matters.

(2) Associate Administrators, Staff Office Directors, and other headquarters officials are responsible for providing timely advice or other assistance to the Director, Office of Management Systems, on matters falling within their respective areas of responsibility. Such input shall serve as the primary basis for coordinated headquarters responses prepared by the Office of Management Systems.

**d. FHWA Headquarter's Officials.** FHWA Headquarter's officials are responsible for providing advice and assistance as requested by the Regional Federal Highway Administrator, who has been delegated authority to take necessary action for FHWA pertaining to disposition of audit findings. No central file of the disposition of findings will be maintained by FHWA Headquarters, since both Administrations have access to files maintained by NHTSA's Office of Management Systems.

**7. Documentation and Reporting.** a. All management actions taken pursuant to State and Community Highway Safety program audit report findings and recommendations, will be documented. Form HS-247, Audit and Administrative Review Finding

Status Record,<sup>1</sup> will serve as the basic medium for recording the status of actions and for reporting to headquarters. As a minimum, this form will be completed for each audit report. Each Regional Administrator is responsible for determining whether in-depth documentation is required and whether or not to establish additional files for this purpose.

b. Form HS-247, Audit and Administrative Review Finding Status Record, will accompany, as an attachment, all quarterly reports required under NHTSA Order 460-1 dated November 2, 1970, (Subject: State Systems of Administrative and Financial Procedures).

For those audit reports in which no adverse findings are cited, a single negative report shall be submitted on Form HS-247, Audit and Administrative Review Finding Status Record, together with the quarterly report for the period during which the final report was issued. No subsequent reporting on that audit is necessary.

c. An information copy of each Form HS-247, Audit and Administrative Review Finding Status Record, will be provided to the cognizant FHWA Regional Administrator.

#### SUPPLEMENT H

##### GUIDELINES FOR THE DESIGNATION OF A STATE AGENCY RESPONSIBLE FOR HIGHWAY SAFETY

1. *Purpose:* This order establishes guidelines relative to the responsibilities and authorities and the organization structure and placement of the State agency responsible for managing the State highway safety program in accordance with the Highway Safety Act of 1970 (Pub. L. 91-605).

2. *General:* Effective planning and administration of a State's highway safety program are needed to initiate, coordinate, and evaluate a State's comprehensive effort in highway safety. While the demands imposed by climate, geography, population, etc., vary, and the resources needed are subject to competition to meet other problems, it is imperative that an effective, State-wide comprehensive highway safety plan exists in coordinated fashion.

The State must assure that its plan is comprehensive and encompasses all political subdivisions; is coordinated to include all aspects of highway safety; and is efficient and effective in using the human, financial and technological resources available to plan and administer the highway Safety efforts in the State.

<sup>1</sup>Form HS-247 was attached to the NHTSA/FHWA Order but, pursuant to 1 CFR 18.11, it is not republished. The form is available for inspection and copying at those locations specified in 49 CFR, Part 7, Appendixes D and H.

Highway safety's high priority and wide impact on State and local agencies caused Congress to designate the Governor of the State as responsible for the administration of the program. The Highway Safety Act of 1970 further requires the designation of a suitably equipped and responsible State agency to carry out the Governor's program. Under his authority and prestige, the designated State agency will draw together highway safety activities in a well-structured, concerted effort that satisfies State objectives and assures a long-term, stable and thoroughly professional program.

3. *Background and authority:* a. House Report No. 1700, 89th Congress, 2nd Session, July 15, 1966, pages 2-3, state:

"... The important consideration is the fact that coordinated State action programs have generally been missing ..."

"... highway safety programs within each State and among the several States will be coordinated and comprehensive."

"... It is the intention ... to recognize the differing governmental and practical problems existing in the several States to lead all of the States to take affirmative action with respect to all of the various aspects of the highway safety problem."

b. House Report No. 1700, 89th Congress, 2nd Session, July 15, 1966, page 21, states:

"... In most States a wide variety of officials and State agencies now are responsible for various aspects of highway safety activity. The committee considers it essential that administrative workability and the success of the program that there be one central authority responsible to the Secretary for the State's safety program. Accordingly, the bill as reported requires that the Governor of the State be the responsible official. It places no restriction, of course, upon his power to delegate his functions in any way he wishes for administration purposes, provided he remains the State official responsible to the Federal Government for conduct of the State's program."

c. Section 203 of the Highway Safety Act of 1970 amends section 402(b)(1)(A) of the 23, United States Code, by requiring that the Governor of the State shall be responsible for the administration of the State highway safety program "through a State agency which shall have adequate power and be suitably equipped and organized to carry out, to the satisfaction of the Secretary, such program." This amendment takes effect December 31, 1971.

d. Volume O, Planning and Administration, dated January 1969, NHTSA Highway Safety Program Manual. This volume further discusses the need for the Governor to be responsible for the highway safety pro-

and provides guidance on program development, operation, and evaluation.

**Responsible State Agency:** To meet the agency requirements of the Highway Act of 1970, the Governor should create an agency to administer the highway safety program. This requirement can be met whether the agency is established by legislative enactment, executive order, or a combination of the two. It is consistent with gubernatorial creation and designation for the State's legislature to determine the size, composition, or other characteristics of the agency provided the Governor's responsibility and jurisdiction are clear. The following standards of responsibility will be applicable to the State:

**Responsibilities and Authorities.** The designated State agency (the head of which shall be designated as the Governor's Highway Safety Representative) must have authority and responsibility to:

prepare, develop and revise comprehensive plans based on an evaluation of highway safety problems within the State; line, develop, and correlate annual programs under such comprehensive

publish priorities for highway safety implementation in the State;

provide information to prospective aid recipients on the benefits of the program and procedures for participation;

encourage local units of government to develop their highway safety planning and administration efforts;

evaluate the implementation of State and highway safety plans and programs;

monitor progress and audit expenditures of Federal highway safety funds by State and local agencies;

coordinate the State's highway safety program plan with other Federally and non-Federally supported programs relating to or having impact on highway safety;

collect statistics and other data relevant to highway safety in the State as required by the National Highway Traffic Safety Administration and/or the Federal Highway Administration;

insure that at least 40 percent of all Federal funds apportioned under this program in any fiscal year are used by local governments or combinations of units of local governments;

make final decisions for the State and enter into contracts and agreements on behalf of the State for Federally funded highway safety projects;

represent the State in all other matters relating under the purview of the Highway Safety Act.

**Organizational Structure.** A State agency responsible for coordinating the Governor's Highway Safety Program may be created or designated as (1) a separate

unit of State government or (2) an office or component of an existing agency of State government. Details of organization and structure are matters of individual State discretion.

The attached organization charts illustrate examples of alternative State agency structures which would be considered as suitably organized in accordance with Section 402(b)(1)(A), title 23, United States Code, as amended. Among the alternatives illustrated, the following are listed by order of preference:

A separate staff office of highway safety directed by the Governor's representative and reporting directly to the Governor. (Chart 1)

A separate State agency for highway safety, equal and on line with other State agencies or departments such as highways, State police, health, education, motor vehicles, etc. (Chart 2)

An office of highway safety within an existing agency such as the State Department of Transportation, the Department of Public Safety, the Department of Highways, or the Department of Motor Vehicles. The office director reports to the agency head, who is designated as the Governor's representative.

Adaptions and modifications are permissible to give the Governor maximum flexibility in administering the State's highway safety program. However, the designated State agency must:

Be a definable agency in the executive branch of State government charged with and empowered to carry out the responsibilities established by the Highway Safety Act.

Have a full-time director who has responsibility and authority for (1) reviewing, approving, and maintaining general oversight of the State program and its implementation and (2) activities listed in 4.a. above.

While responsibilities for State program development, coordination, and evaluation must ultimately reside in one State agency subject to the jurisdiction of the Governor, this does not overlook important operational roles of program development and implementation by other State agencies nor by local units of government.

**c. Staff and Capabilities.** The NHTSA and the FHWA must be assured that the designated State agency can properly perform the assigned functions. To this end, the following minimum standards are established for the designated State agency staff:

**A full-time director;**

A staff of adequate size (e.g., no less than three full-time professionals) and competencies (e.g., program planning, data analysis and evaluation, financial operations, program coordination, public information, etc.) to accomplish required program planning, coordination, and evaluation with each of

the major State operational agencies and with local governmental jurisdictions and agencies;

The inclusion of the State agency's highway safety staff within the State's existing personnel merit system.

The above merit system requirement is not meant to preclude exemptions, if appropriate under State law. At the option of the State, the following positions may be exempted:

- Governor's highway safety representative;
- Director of the office of highway safety;
- Members of state advisory boards, councils, or commissions.

## SUPPLEMENT I

### USE OF SECTION 402 FUNDS FOR TRAINING

1. *Purpose:* This Order establishes: a. Policy on the eligibility of highway safety training activities funded under section 402 of Title 23 U.S.C.

b. Procedures for the submission of supplemental information in support of training tasks included in a State's Annual Work Program.

2. *Effect on Other Directives:* NHTSA Order 462-10, dated July 31, 1969, (Subject: Procedures for Coordination of 402 Education and Training Grant Applications), is hereby cancelled.

This Order expands on Volume 103 of the Highway Safety Program Manual, and provides that certain AWP supporting information that is normally retained by the Governor's Representative, be transmitted to the appropriate Federal approving agency.

3. *Responsibilities:* NHTSA and FHWA Regional Administrators are responsible for assuring that the policies and procedures established by this Order are adhered to within their parts of the State's program.

4. *Policy on Funding Eligibility:* Section 402(g) of Title 23 U.S.C. precludes the use of 402 funds for any purposes for which Section 403 funds are authorized. To avoid overlap in funding training activities under these sections, it has been determined that Section 403 funds may be used to establish new training programs and to improve or expand established programs. Usually such activities are administered on a national or regional basis to overcome general long term deficiencies, as opposed to meeting the short term needs of State and local jurisdictions in carrying out their safety programs. Section 403 funds may, for example, be used to fund national fellowship programs in highway safety and may involve training periods of nine months or longer.

Section 402 training is for continuing "action" programs at the State and local levels.

Only those costs directly associated with a highway traffic safety program of instruction should be included as training costs and

reported as provided by this Order. Such direct costs may include, for example, enrollment fees, tuition, training aids, travel expenses, and per diem. Other costs, such as salary, may also be eligible for funding under Section 402, but should not be reported as training expenses.

Training projects may be eligible for Section 402 funding when all of the following conditions are satisfied:

a. The personnel being trained are identified with a State's planned or operational program to implement a portion of its approved highway safety program and are committed to work in an identified highway safety program area upon completion of the training. It is expected that personnel completing training of six months or more will be required to serve not less than one year in an identified highway safety program area upon completion of the training.

b. Training is a necessary incident to or in support of a planned or operational State or local highway safety program.

c. Training activities are less than nine months in duration as, for example, short courses and in-service training.

d. All training equipment, materials, and facilities acquired or improved with 402 funds will be continuously used in the State or local highway traffic safety program. Costs for enrollment fees, tuition, and other charges will be comparable to costs paid by the agency for other similar training services.

### GUIDELINES FOR SUBMITTING TRAINING PROPOSALS

Subelement plans which include training should include a complete description of the nature, scope, and objectives of the proposed training program; a complete description of the total program objectives; a statement of the objectives of each course; and a statement of the objectives of each major unit within the proposed course. The application should clearly state how these objectives are to be accomplished. Organizations proposing a project that includes training should include in their application, as a minimum, the following information: (1) Form 193, Attachment II is provided for this purpose):

*Purpose.* Present a brief statement of the purpose and specific objectives of the training program. The statement should include the need for the training, how the course or program component contributes to the objectives, how the course relates to State and local highway safety programs, and how the course or training program relates to other current State and local training programs.

*Course Content.* Present an outline of the course content in sufficient detail to permit an assessment of its nature and scope. As a minimum, this outline should include a list

subjects to be taught, the amount of allocated to each subject, and the objectives (knowledge, skills, etc.) to be met by subject or unit presentation within the course. Other information such as the material upon which the course is based, and the textbooks and collateral references to be used should also be provided. *Course Schedule.* Present information on length of the course, including the number of days and hours per day. If the course is part of a sequence of other courses, its position in the sequence should be identified. The title, description, and allocation of each major unit within the course should be identified. The number of times the course is to be presented during the academic or fiscal year should also be identified.

*Participants (Students).* The number of students scheduled to attend each course and the total number of students to be trained with the funds required for the training program should be indicated. Also indicate the prerequisites for course attendance (e.g., job position, age limits, educational accomplishments, etc.) and other pertinent data.

*Costs.* The cost of each course as well as the cost of the total training program of which the course is a part should be identified. Course costs should be itemized to identify specifically the direct and indirect cost of instruction, including, but not limited to, such items as instructors, facilities, equipment, visual aids, textbooks, handout materials, support services, student expenses, and institutional overhead. In addition to the itemized and total costs, the per unit cost of instruction will be identified for each course, based on the number of students satisfactorily completing the course.

*Instructors.* Include the name, field of specialization, and academic credentials (degrees, teaching experience, etc.) of each instructor who will participate in the curriculum development process and the actual teaching of each course or portion of a course.

*Special Facilities and Equipment.* Describe the specialized course facilities and equipment, such as simulators, laboratory equipment, housing, technical aids, special laboratories, multi-car driving ranges, etc., which are to be used in the training program.

*Sponsoring Agency or Institution.* Identify the agency or institution sponsoring and/or administering the training program.

*Scope and Content of Training Program.* a. Section 402 training activities should expand or upgrade the capability of existing staff to perform highway related safety functions as distinguished from general skills and knowledge. A highway safety training program in which a majority of the content consists of safety-related subjects,

but a portion of the class time is devoted to these or other general subjects, will be generally funded on a pro-rata basis according to the content containing traffic or highway safety subject matter.

b. Developing course content as part of a safety training project for individual State and local agencies may be included only where it can be shown that such development is a unique requirement of a specific action program. Course and curriculum development must not duplicate materials already developed for similar purposes by either the FHWA, the NHTSA, or by other States. This does not preclude the funding of projects intended to adapt these curricula and training materials to meet particular State and local instructional needs. The NHTSA and FHWA Washington Offices will maintain files of safety training curriculums and training programs which will be made available upon request.

6. *Procedures for Submitting Supplemental Training Information:* a. Training is a unique requirement of State and local safety programs. It embraces a multitude of program areas and accounts for a substantial portion of federally funded safety activities. Accordingly, this Order sets forth guidelines for the use of the approving offices in evaluating proposals for training. It also requires that information on completed training be submitted to the approving offices. The information is the basis for regional and national analyses pertaining to types and costs of safety training.

b. All training or training program development tasks included in Annual Work Programs must be supported by sufficient descriptive information to enable the approving offices to perform both quantitative and qualitative evaluations. The evaluative information contained in Attachment I, "Guidelines for Submitting Training Proposals" reflects the information which should accompany each proposed training task. This information should be provided for each subelement training task on the form contained in Attachment II, "Training Activities Information."

c. Evaluation of proposed training activities by the States, and NHTSA and FHWA Regional Offices should be based on the jurisdiction's needs, the objectives of the training, and the likelihood that the training will accomplish the intended objectives. Unique proposals and those generating questions of eligibility may be referred to the Washington office for evaluation.

d. Only those costs directly associated with a highway traffic safety program of instruction should be reported as training costs on HS Form 193 and HS Form 194. While other costs such as salary of the trainee are fundable under Section 402 as non-training expenses, they should not be

included as training expense items on these forms.

e. At the completion of all training tasks, the form contained in Attachment III, "Section 402 Record of Completed Training" will be completed by the Governor's Representative and submitted to the FHWA and NHTSA as appropriate for use in assessing manpower development and training progress. Three copies of each form relating to all standards will be submitted to the NHTSA Regional Administrator who will review each form for completeness and transmit two copies to the Chief, Manpower Development Division, N42-22, Office of State and Community Comprehensive Programs, TSP. In addition, three copies of each form relating to the FHWA administered standards will be submitted to the FHWA Division Engineer, who will forward one copy to the FHWA Regional Administrator and one copy to the Director, OHS, FHWA.

f. On depletion of initial stock, copies of HS Form 193, "Training Activities Information," and of HS Form 194, "Section 402 Record of Completed Training," may be obtained from NHTSA, General Services Division, N48-51, Room 5111, NASSIF Building, 400 7th Street SW., Washington, D.C. 20590.

(Sec. 6(a)(6)(B), 80 Stat. 731, 937; 23 U.S.C. 315, 401, 402, 49 U.S.C. 1655, Pub. L. 89-564, delegations at 49 CFR 1.48 and 49 CFR 1.50) [33 FR 16337, Nov. 7, 1968 (Std. 14-16); 33 FR 16560, Nov. 14, 1968 (Std. 1-13), 36 FR 1137, Jan. 23, 1971; 36 FR 22574, Nov. 25, 1971; 37 FR 6575, Mar. 31, 1972; 37 FR 9212, May 6, 1972 (Std. 17); 37 FR 9623, May 13, 1972 (Std. 18). Redesignated at 38 FR 10811, May 2, 1973, and amended at 38 FR 12401, May 11, 1973 (Std. 17); 40 FR 53730, Nov. 19, 1975 (Supps. A through I); 43 FR 9144, Mar. 6, 1978; 45 FR 58037, Aug. 29, 1980 (Supp. B.)]

## PART 1205—HIGHWAY SAFETY PROGRAMS; DETERMINATIONS OF EFFECTIVENESS

### Sec.

#### 1205.1 Scope.

#### 1205.2 Purpose.

#### 1205.3 Identification of National Priority Program Areas.

#### 1205.4 Funding procedures for National Priority Program Areas.

#### 1205.5 Funding procedures for other program areas.

**AUTHORITY:** Sec. 1107(d), Pub. L. 97-35; 95 Stat. 357 (23 U.S.C. 402); delegations of authority at 49 CFR 1.48 and 1.50.

**SOURCE:** 47 FR 15120, Apr. 8, 1982, unless otherwise noted.

### § 1205.1 Scope.

This part identifies those highway safety programs that are eligible for Federal funding under the State and Community Highway Safety Grant Program (23 U.S.C. 402) and specifies the Federal funding requirements for those programs.

### § 1205.2 Purpose.

The purpose of this part is to establish national highway safety priorities and establish program areas within which highway safety programs developed by the states would be eligible to receive Federal funding.

### § 1205.3 Identification of National Priority Program Areas.

(a) Under statutory provisions administered by NHTSA, the following NHTSA-administered highway safety program areas have been identified as encompassing a major highway safety problem which is of national concern and for which effective countermeasures have been identified. Programs developed in such areas are eligible for Federal funding, pursuant to guidelines issued by the National Highway Traffic Safety Administration and the review procedure set forth in § 1205.4:

- (1) Alcohol Countermeasures
- (2) Police Traffic Services
- (3) Occupant Protection
- (4) Traffic Records
- (5) Emergency Medical Services

(b) Under statutory provisions administered by FHWA, the following FHWA-administered highway safety program area has been identified as encompassing a major highway safety problem which is of national concern and for which effective countermeasures have been identified. The program developed in this area is eligible for Federal funding, pursuant to provisions of 23 U.S.C. 402(g), guidelines issued by the Federal Highway Administration and the review procedures set forth in § 1205.4: Safety Construction and Operational Improvements.

### § 1205.4 Funding procedures for National Priority Program Areas.

If a State intends to use funds under 23 U.S.C. 402 to support a program

is within a National Highway Safety Priority Program Area, it shall submit as part of its annual Highway Safety Plan a three to five page overview of all highway safety problems identified in the State. The following procedure shall then apply:

- (a) The State shall describe each highway safety problem within such Priority Areas, any countermeasure proposed to decrease or stabilize the problem, and the kinds of data relied on in the making of such problem countermeasure identifications.
- (b) The State shall list the specific projects proposed to implement such countermeasures and the criteria for project selection.
- (c) The State shall conduct an evaluation of its programs of the prior year, and shall describe the evaluation in the annual Highway Safety Plan.
- (d) NHTSA and/or FHWA, as applicable, shall review the State's Highway Safety Plan, to determine whether each proposed program addresses identified problems.
- (e) If the State meets the criteria of paragraphs (a) through (d), of this section, NHTSA or FHWA, as applicable, shall approve the program as part of the Highway Safety Plan.

#### 1205.5 Funding procedures for other program areas.

If a State intends to use funds under U.S.C. 402 to support a project that is not within a National Highway Safety Priority Program Area, the State shall describe the project in its annual Highway Safety Plan, and shall, at its option, select one or both of the following procedures:

- (a) *Formal decisionmaking.* Under this procedure, the State shall first develop and submit as part of its annual Highway Safety Plan or by a separate submission a formal administrative decisionmaking process for identifying highway safety problems and corresponding countermeasures. Upon approval of the Plan and adoption by the State of the process involved, a State shall thereafter certify in subsequent submissions that it has developed each proposed project in accordance with the described process. NHTSA or FHWA shall on such subsequent submissions consider the findings and de-

terminations made by the State pursuant to such process to be determinative and shall review proposed projects only pursuant to the limited review criteria applicable to the projects subject to § 1205.4. NHTSA and/or FHWA, as applicable, shall review and approve proposed State administrative processes pursuant to the following general criteria:

- (1) Use of State data on traffic accidents to determine the magnitude and severity of the highway safety problems by geographic area and target group.

- (2) Determination of related system deficiencies and driver behavior deficiencies that can be stabilized or remedied by countermeasure approaches.

- (3) Development of countermeasures to remedy the problems. Priorities should be assigned based on the following considerations:

- (i) Estimates of the impact on accidents and injuries;

- (ii) Cost effectiveness;

- (iii) Past program and project results;

- (iv) Innovative approaches;

- (v) Comprehensiveness of programs;

- (vi) Catalytic and leverage effects; and

- (vii) Prospects for activities to be self-supporting or continued with State/local resources after Federal funds are discontinued.

- (4) Development of projects from the countermeasure approaches that ensure consultation with affected groups and participation by the public. This shall be accomplished by conducting public meetings to identify traffic safety problems and to recommend alternate countermeasure solutions.

- (5) Development of administrative and impact evaluations for the projects, as appropriate.

- (b) *Problem identification.* Under this procedure, the State shall submit information on individual proposed projects. NHTSA or FHWA, as applicable, shall approve each project if it addresses the identified problem in a manner reasonably calculated to decrease or stabilize the problems. The State shall submit, at a minimum, the following information:



(1) The State and local data on traffic accidents used to determine the magnitude and severity of the particular highway safety problem by geographic area and target group.

(2) The impact each project is estimated to have on traffic accidents and injuries.

(3) Estimates of the resources necessary to carry out planned activities and projects.

(4) The relation of each project to a comprehensive, balanced program.

(5) The improvements in program operational efficiency and/or cost effectiveness which are expected as a result of the implementation of each project.

(6) The commitment of State and/or local resources to each project.

(7) The prospects for activities to be self-supporting or continued with State/local resources after Federal funds are discontinued.

(8) The criteria to be used to conduct administrative and impact evaluations of products, as appropriate.

## **PART 1206—RULES OF PROCEDURE FOR INVOKING SANCTIONS UNDER THE HIGHWAY SAFETY ACT OF 1966**

Sec.

1206.1 Scope.

1206.2 Purpose.

1206.3 Definitions.

1206.4 Sanctions.

1206.5 Commencement of proceedings.

1206.6 Contents of notice of proposed recommended determination.

1206.7 Hearing officers.

1206.8 Prehearing conference.

1206.9 Consent determination.

1206.10 Hearing.

1206.11 Recommended determination.

1206.12 Final determination.

**AUTHORITY:** 23 U.S.C. 116, 315, 402.

**SOURCE:** 39 FR 19206, May 31, 1974, unless otherwise noted.

### **§ 1206.1 Scope.**

This part establishes procedures governing determinations to invoke the sanctions applicable to any State that does not comply with the highway safety program requirements in the Highway Safety Act of 1966, as amended (23 U.S.C. 402), and highway

safety program standards issued thereunder.

### **§ 1206.2 Purpose.**

The purpose of this part is to prescribe procedures for determining whether and the extent to which the 23 U.S.C. 402 sanctions should be invoked, and to ensure a full airing of views on the issues relevant to such determinations by affording the affected State and all other interested persons an opportunity to participate in a public hearing.

### **§ 1206.3 Definitions.**

As used in this part:

(a) "Administrators" means the Administrators of the Federal Highway Administration and the National Highway Traffic Safety Administration.

(b) "Affected State" means the State with respect to which a proposed recommended determination has been made pursuant to this part.

(c) "Highway safety program" means a State program consisting of both (1) a Comprehensive Highway Safety Plan, a multi-year plan of the State and its political subdivisions for implementing the highway safety program standards and (2) an Annual Highway Safety Work Program, a program detailing the activities and proposed expenditures of the State and its political subdivisions for implementing selected components of the State's Comprehensive Highway Safety Plan during a single year.

(d) "Highway safety program standards" means the standards in § 1204.4 of this chapter, issued under 23 U.S.C. 402, for State highway safety programs.

(e) "Implementing" includes, but is not limited to, complying with conditions upon which the Secretary has granted approval for a State's highway safety program.

(f) "Secretary" means the Secretary of Transportation.

### **§ 1206.4 Sanctions.**

(a)(1) Except as provided in paragraph (a)(2) of this section, the Secretary withholds all of a State's Federal highway safety funds and 10 percent

the Federal-aid highway funds that would otherwise have been apportioned to the State under 23 U.S.C. 104 and 104, respectively, and withhold approval of further highway safety programs in the State, if he finally determines pursuant to this part that a State:

(a) Does not have a highway safety program approved by him in accordance with 23 U.S.C. 402; or

(b) Is not implementing such an approved program.

(c) The Secretary may suspend, for such periods as he deems necessary, the application to a State of the provisions in 23 U.S.C. 402 regarding the withholding of funds apportioned under 23 U.S.C. 104, if he determines that such suspension is in the public interest.

(d) When the Secretary withholds funds and program approval from a State pursuant to paragraph (a)(1) of this section, he continues doing so until the State has an approved program or is implementing an approved program to his satisfaction, as appropriate.

(e)(1) The Governor of each State shall implement, or cause to be implemented, a highway safety program approved by the Secretary pursuant to U.S.C. 402. If the Governor lacks the authority to implement such program or part thereof, he shall enter into formal agreements for its implementation with appropriate officials of the appropriate State agency, political subdivision, or other governmental instrumentality. However, the existence of such agreement does not relieve the Governor of his responsibility for implementation of the entire highway safety program.

(2) If the Secretary finally determines pursuant to this part that a State has failed to comply with the Federal laws or regulations with respect to its highway safety program, and has failed to implement a highway safety program approved by him pursuant to 23 U.S.C. 402, he may withhold payment to the State on account of (i) the State's current annual highway safety work program, with respect to obligations incurred after the date of the Secretary's determination or a date established in such determination,

whichever is later, and (ii) the State's subsequent annual highway safety work programs, and may also withhold approval of further highway safety programs of the State, until the State complies or takes remedial action to the satisfaction of the Secretary, as appropriate.

#### § 1206.5 Commencement of proceedings.

(a) The Administrators initiate the proceedings pursuant to this part by making a proposed recommended determination to invoke the sanctions specified in § 1206.4

(b) The Administrators send the Governor of the affected State by certified mail and publish in the **FEDERAL REGISTER** a notice of the proposed recommended determination.

#### § 1206.6 Contents of notice of proposed recommended determination.

The notice of proposed recommended determination includes:

(a) A statement of the reasons for the proposed action, including the specific highway safety program deficiencies upon which the proposed recommended determination is based; and

(b) The time, date, and place for a hearing at which the affected State and any interested person may present evidence and oral and written views, or both, concerning the specified deficiencies. Hearings are held in Washington, D.C., at the headquarters of the Department of Transportation.

#### § 1206.7 Hearing officers.

(a) A three-member hearing board is established consisting of an Office of the Secretary official appointed by the Secretary, a Federal Highway Administration official appointed by the Administrator of that Administration, and a National Highway Traffic Safety Administration official appointed by the Administrator of that Administration. The official from the Office of the Secretary serves as presiding officer. The appointment of the hearing board is announced in a notice published in the **FEDERAL REGISTER** by the presiding officer. A copy of the notice is sent to the Governor of the affected State by certified mail.

(b) The presiding officer has power to take any action and to make all necessary rules and regulations to govern the conduct of the hearing. His powers include the following:

(1) Changing the date and time of the hearing upon reasonable notice to the affected State and other hearing participants and publication of such change in the **FEDERAL REGISTER**;

(2) Continuing the hearing in whole or in part;

(3) Regulating the course of the hearing and the conduct of the participants and counsel therein;

(4) Examining witnesses; and

(5) Taking any other action authorized by this part.

**§ 1206.8 Prehearing conference.**

(a) At any time before the hearing begins, the presiding officer, on his own initiative or at the written request of the Governor of the affected State, may, after publication of a notice in the **FEDERAL REGISTER** giving notice to interested persons, convene a public prehearing conference to consider the following:

(1) Simplification and clarification of the issues;

(2) Stipulations as to the facts, and contents and authenticity of documents;

(3) Disclosure of the names and addresses of witnesses and provision of documents intended to be offered in evidence; or

(4) Any other matter that will tend to simplify the issues or expedite the proceedings.

**§ 1206.9 Consent determination.**

At any time prior to the commencement of the hearing, the affected State and the Administrators may execute an appropriate agreement for disposing of the matter, on which the proposed recommended determination is based, by mutual consent for the consideration of the Secretary. The agreement is submitted to the Secretary, who may:

(a) Accept it and publish a notice in the **FEDERAL REGISTER** setting forth its terms;

(b) Reject it and direct that the proceedings in the matter continue; or

(c) Take such other action as he deems appropriate.

**§ 1206.10 Hearing.**

(a) Hearings held pursuant to this part are informal, legislative-type hearings and are open to the public.

(b) The affected State and any interested person participating in a hearing conducted pursuant to this part may, except as specified by the presiding officer pursuant to § 1206.7(b):

(1) Appear by counsel or other authorized representative;

(2) Present evidence orally or by documents; and

(3) Present oral or written argument.

(c) The hearing is stenographically transcribed verbatim and reported by an official reporter designated by the presiding officer.

(d) As soon as practicable after the presiding officer receives the official transcript of the hearing, exhibits, and other documents filed at the hearing, he forwards them to the Administrators.

**§ 1206.11 Recommended determination.**

As soon as practicable, the Administrators review the materials forwarded to them by the presiding officer, and the prehearing conference notices, and the evidence of the Administrations regarding the affected State's program deficiencies cited in the proposed recommended determination. On the basis of the review, they issue a recommended determination and submit it and the material they reviewed to the Secretary.

**§ 1206.12 Final determination.**

(a) As soon as practicable, the Secretary reviews the recommended determination and the material forwarded him by the Administrators. On the basis of the review, the Secretary may adopt or reject the recommended determination, in whole or in part. The Secretary then issues a final determination which includes:

(1) His decision, and reasons therefor, on the question of whether and to what extent the sanctions provided in § 1206.4 will be invoked; and

A specification of the funds and program approval, if any, to be with-

A copy of the final determination sent by certified mail to the Governor of the affected State and to each hearing participant, and is published in the FEDERAL REGISTER.

## **T 1230—HIGHWAY SAFETY PROGRAM STANDARDS—APPLICABILITY TO FEDERALLY ADMINISTERED AREAS**

- 1 Scope.
- 2 Purpose.
- 3 Applicability.
- 4 Requirements.

**AUTHORITY:** 23 U.S.C. 402, 38 FR 12147, 49 L48.

**SOURCE:** 38 FR 18665, July 13, 1973, unless otherwise noted.

### **0.1 Scope.**

This part establishes requirements for implementation by Federal Departments or agencies of highway safety program standards set out in chapter, in federally administered areas where a Federal department or agency controls highways open to public travel or supervises traffic operations.

### **0.2 Purpose.**

The purpose of this part is to ensure uniform standards established to regulate highway safety activities uniformly throughout the United States to those highways and activities administered by a Federal agency.

### **0.3 Applicability.**

Pursuant to 23 U.S.C. 402, the highway safety program standards set forth in this chapter are applicable to Federal departments and agencies

that control highways open to public travel within federally administered areas or supervise traffic operations on such highways, to the extent that they engage in activities covered by the highway safety program standards set out in this chapter.

### **§ 1230.4 Requirements.**

(a) Each department or agency shall implement the highway safety program standards, to the extent that they are relevant to the activities of the department or agency. Implementation activities shall include but not be limited to:

(1) In cooperation with the FHWA and NHTSA, review of the department's or agency's activities to determine which are covered by the highway safety program standards.

(2) Review of the current status of those activities with regard to the relevant requirements of the standards.

(3) Development, submission to the FHWA and NHTSA, and periodic updating and implementation of a multi-year Comprehensive Plan for highway safety in accordance with the highway safety program standards.

(b) Each department or agency shall submit annually to the Secretary of Transportation a comprehensive report on the administration of its highway safety program for the preceding calendar year. The report shall be suitable for inclusion in the report to the President for transmittal to the Congress as required by section 202(a) of the Highway Safety Act of 1966 (Pub. L. 89-564), and shall include but not be limited to:

(1) Thorough statistical data on fatal, injury and property damage accidents which occurred within its federally administered area.

(2) The scope of observance of applicable Federal standards.

(3) The effectiveness of its highway safety programs.

## SUBCHAPTER C—GENERAL PROVISIONS

### PART 1250—POLITICAL SUBDIVISION PARTICIPATION IN STATE HIGHWAY SAFETY PROGRAMS

#### Sec.

- 1250.1 Scope.
- 1250.2 Purpose.
- 1250.3 Policy.
- 1250.4 Determining local share.
- 1250.5 Waivers.

**AUTHORITY:** 23 U.S.C. 315, 402(b); and delegations of authority at 49 CFR 1.48 and 1.50.

**SOURCE:** 41 FR 23948, June 14, 1976, unless otherwise noted.

#### § 1250.1 Scope.

This part establishes guidelines for the States to assure their meeting the requirements for 40 percent political subdivision participation in State highway safety programs under 23 U.S.C. 402 (b)(1)(C).

#### § 1250.2 Purpose.

The purpose of this part is to provide guidelines to determine whether a State is in compliance with the requirement that at least 40 percent of all Federal funds apportioned under 23 U.S.C. 402 will be expended by political subdivisions of such State.

#### § 1250.3 Policy.

To assure that the provisions of 23 U.S.C. 402(b)(1)(C) are complied with, the NHTSA and FHWA field offices will:

(a) Prior to approving the State's Annual Work Program (AWP), review the AWP and each of the subelement plans which make up the AWP. The NHTSA Regional Administrator will review the 1½ safety standard areas for which NHTSA is responsible and the FHWA Division Administrator will review the 3½ safety standard areas for which FHWA is responsible. The narrative description for each subelement plan should contain sufficient information to identify the funds to be expended by, or for the benefit of the political subdivisions.

(b) Withhold approval of a State's AWP, as provided in Highway Safety Program Manual Volume 103, Chapter

III, Paragraph 3c, where the program does not provide at least 40 percent of Federal funds for planned local program expenditures.

(c) During the management review of the State's operations, determine if the political subdivisions had an active voice in the initiation, development and implementation of the program for which such sums were expended.

#### § 1250.4 Determining local share.

(a) In determining whether a State meets the requirement that at least 40 percent of Federal 402 funds be expended by political subdivisions, FHWA and NHTSA will apply the 40 percent requirement sequentially to each fiscal year's apportionments treating all apportionments made from a single fiscal year's authorizations as a single entity for this purpose. Therefore, at least 40 percent of each State's apportionments from each year's authorizations must be used in the highway safety programs of its political subdivisions prior to the period when funds would normally lapse. The 40 percent requirement is applicable to the State's total federally funded safety program irrespective of Standard designation or Agency responsibility.

(b) When Federal funds apportioned under 23 U.S.C. 402 are expended by a political subdivision, such expenditures are clearly part of the local share. Local safety project related expenditures and associated indirect costs, which are reimbursable to the grantee local governments, are classifiable as the local share of Federal funds. Illustrations of such expenditures are the cost incurred by a local government in planning and administration of project related safety activities, driver education activities, traffic court programs, traffic records system improvements, upgrading emergency medical services, pedestrian safety activities, improved traffic enforcement, alcohol countermeasures, highway debris removal programs, pupil transportation programs, accident investigation, surveillance of high accident

tions, and traffic engineering serv-

When Federal funds apportioned under 23 U.S.C. 402 are expended by a State or a State agency for the benefit of a political subdivision, such as may be considered as part of the share, provided that the political subdivision benefitted has had an active voice in the initiation, development, and implementation of the program for which such funds are expended. In no case may the State arbitrarily ascribe State agency expenditures as "benefitting local government." Where political subdivisions have had an active voice in the initiation, development, and implementation of a particular program, and a political subdivision which has not had an active voice agrees in advance of implementation to accept the benefits of the program, the Federal share of the cost of such benefits may be credited toward meeting the 40 percent local participation requirement. Where no political subdivisions have an active voice in the initiation, development, and implementation of a particular program, but a political subdivision requests the benefits of the program as part of the local government's highway safety program, the Federal share of the cost of such benefits may be credited toward meeting the 40 percent local participation requirement. Evidence of consent and acceptance of the work, goods or services on behalf of the local government must be established and maintained on file by the State, until all funds authorized for a specific year are expended and audits completed.

d) State agency expenditures which are generally not classified as local are within such standard areas as vehicle inspection, vehicle registration and driver licensing. However, where these standards provide funding for services such as: driver improvement tasks administered by traffic courts, or where they furnish computer support for local government requests for traffic record searches, these expenditures are classifiable as benefitting local programs.

#### § 1250.5 Waivers.

While the 40 percent requirement may be waived in whole or in part by the Secretary or his delegate, it is expected that each State program will generate political subdivision participation to the extent required by the Act so that requests for waivers will be minimized. Where a waiver is requested, however, it will be documented at least by a conclusive showing of the absence of legal authority over highway safety activities at the political subdivision levels of the State and will recommend the appropriate percentage participation to be applied in lieu of the 40 percent.

### PART 1251—STATE HIGHWAY SAFETY AGENCY

Sec.

1251.1 Purpose.

1251.2 Policy.

1251.3 Authority.

1251.4 Functions.

**AUTHORITY:** 23 U.S.C. 402; 23 U.S.C. 315; 49 CFR 1.48 and 1.50.

**SOURCE:** 45 FR 59145, Sept. 8, 1980, unless otherwise noted.

#### § 1251.1 Purpose.

The purpose of this part is to prescribe the minimum authority and functions of the State Highway Safety Agency established in each State by the Governor under the authority of the Highway Safety Act (23 U.S.C. 402).

#### § 1251.2 Policy.

In order for a State to receive funds under the Highway Safety Act, the Governor shall exercise his or her responsibilities through a State Highway Safety Agency that has "adequate powers and is suitably equipped and organized to carry out the program to the satisfaction of the Secretary." 23 U.S.C. 402(b)(1)(A). Accordingly, it is the policy of this part that approval of a State's Highway Safety Plan will depend upon the State's compliance with §§ 1251.3 and 1251.4 of this part.

#### § 1251.3 Authority.

Each State Highway Safety Agency shall be authorized to:

(a) Develop and implement a process for obtaining information about the highway safety programs administered by other State and local agencies.

(b) Periodically review and comment to the Governor on the effectiveness of highway safety plans and activities in the State regardless of funding source.

(c) Provide or facilitate the provision of technical assistance to other State agencies and political subdivisions to develop highway safety programs.

(d) Provide financial and technical assistance to other State agencies and political subdivisions in carrying out highway safety programs.

§ 1251.4 Functions.

Each State Highway Safety Agency shall:

(a) Develop and prepare the Highway Safety Plan prescribed by Volume 102 of the Highway Safety Program Manual (23 CFR 1204.4, Supplement B), based on evaluation of highway accidents and safety problems within the State.

(b) Establish priorities for highway safety programs funded under 23 U.S.C. 402 within the State.

(c) Provide information and assistance to prospective aid recipients on program benefits, procedures for participation, and development of plans.

(d) Encourage and assist local units of government to improve their highway safety planning and administration efforts.

(e) Review the implementation of State and local highway safety plans and programs, regardless of funding source, and evaluate the implementation of those plans and programs funded under 23 U.S.C. 402.

(f) Monitor the progress of activities and the expenditure of section 402 funds contained in the State's approved Highway Safety Plan.

(g) Assure that independent audits are made of the financial operations of the State Highway Safety Agency and of the use of section 402 funds by any subrecipient.

(h) Coordinate the State Highway Safety Agency's Highway Safety Plan with other federally and non-federally supported programs relating to or affecting highway safety.

(i) Assess program performance through analysis of data relevant to highway safety planning.

**PART 1252—STATE MATCHING COSTS  
PLANNING AND ADMINISTRATION**

**Sec.**

1252.1 Purpose.

1252.2 Definitions.

1252.3 Applicability.

1252.4 Policy.

1252.5 Procedures.

1252.6 Responsibilities.

**AUTHORITY:** 23 U.S.C. 402 and 315; 49 CFR 1.48(b) and 1.50.

**SOURCE:** 45 FR 47145, July 14, 1980, unless otherwise noted.

§ 1252.1 Purpose.

This part establishes the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) policy on planning and administration (P&A) costs for State highway safety agencies. It defines planning and administration costs, describes the expenditures that may be used to satisfy the State matching requirement, prescribes how the requirement will be met, and when States will have to comply with the requirement.

§ 1252.2 Definitions.

(a) *Fiscal year* means the twelve months beginning each October 1, and ending the following September 30.

(b) *Direct costs* are those costs which can be identified specifically with a particular planning and administration or program activity. The salary of a data analyst on the State highway safety agency staff is an example of a direct cost attributable to P&A. The salary of an emergency medical technician course instructor is an example of direct cost attributable to a program activity.

(c) *Indirect costs* are those costs (1) incurred for a common or joint purpose benefiting more than one program activity and (2) not readily assignable to the program activity specifically benefited. For example, centralized support services such as personnel, procurement, and budgeting would be indirect costs.

(d) *Planning and administration*  
(A) *costs* are those direct and indirect costs that are attributable to the overall development and management of the Highway Safety Plan. Such costs could include salaries, related personnel benefits, travel expenses, rental costs.

(e) *Program management costs* are those costs attributable to a program (e.g., salary of an emergency medical services coordinator, the impact evaluation of an activity, or the travel expenses of a local traffic engineer).

(f) *State highway safety agency* is an agency directly responsible for coordinating the State's highway safety program authorized by 23 U.S.C. 402.

### 52.3 Applicability.

The provisions of this part apply to obligations incurred after November 6, 1981, for planning and administration under 23 U.S.C. 402.

### 52.4 Policy.

Federal participation in P&A activities shall not exceed 50 percent of the total cost of such activities, or the applicable sliding scale rate in accordance with 23 U.S.C. 120. The Federal contribution for P&A activities shall not exceed 10 percent of the total funds the State receives under 23 U.S.C. 402. In accordance with 23 U.S.C. 120(i), the Federal share payable for projects in the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall be 100 percent. The Hawaiian State, as defined by 23 U.S.C. 120(i), is exempt from the provisions of this part. NHTSA funds shall be used only to finance P&A activities attributable to NHTSA programs and FHWA funds shall be used only to finance P&A costs attributable to FHWA programs.

FR 15121, Apr. 8, 1982]

### 52.5 Procedures.

(a) P&A tasks and related costs shall be described in the P&A module of the State's Highway Safety Plan. The State's matching share shall be determined on the basis of the total P&A costs in the module. Federal participation shall not exceed 50 percent (or

the applicable sliding scale) of the total P&A costs. A State shall not use NHTSA funds to pay more than 50 percent of the P&A costs attributable to NHTSA programs nor use FHWA funds to pay more than 50 percent of the P&A costs attributable to FHWA programs. In addition, the Federal contribution for P&A activities shall not exceed 10 percent of the total funds in the State received under 23 U.S.C. 402.

(b) FHWA and NHTSA funds may be used to pay for the Federal share of P&A costs up to the amounts determined by multiplying the Federal share by the ratio between the P&A costs attributable to FHWA programs and the P&A costs attributable to NHTSA programs. For example: A State's total P&A costs are \$40,000. The State's share is 50 percent or \$20,000. To pay the remaining \$20,000, the State first ascertains the amount spent out of the total costs for each agency's programs, then applies the ratio between these two amounts to the \$20,000. If \$36,000 of the total costs are spent for NHTSA programs and \$4,000 for FHWA programs, the ratio would be 9/1 and the corresponding allocation of the Federal share would be \$18,000 to NHTSA and \$2,000 to FHWA.

(c) A State at its option may allocate salary and related costs of State highway safety agency employees to one of the following:

(1) The administration and planning functions in the P&A module;

(2) The program management functions in one or more Program modules; or

(3) A combination of administration and planning functions in the P&A module and the program management functions in one or more program modules.

(d) If an employee is principally performing administration and planning functions under a P&A module, the total salary and related costs may be allocated to the P&A module. If the employee is principally performing program management functions under one or more program modules, the total salary and related costs may be charged directly to the appropriate module(s). If an employee is spending



## § 1252.6

time on a combination of administration and planning functions and program management functions, the total salary and related costs may be charged to the appropriate module(s) based on the actual time worked under each module. If the State highway safety agency elects to allocate costs based on actual time spent on an activity, the State highway safety agency must keep accurate time records showing the work activities for each employee. The State's record keeping system must be approved by the appropriate FHWA and NHTSA officials.

(e) Those tasks and related costs contained in the P&A module, not defined as P&A costs under § 1252.2(d) of this part, are not subject to the planning and administration cost matching requirement.

[45 FR 47145, July 14, 1980, as amended at 47 FR 15121, Apr. 8, 1982]

## 23 CFR Ch. II (4-1-85 Edition)

### § 1252.6 Responsibilities.

During the Highway Safety Plan approval process, the responsible FHWA and NHTSA officials shall approve P&A module only if the projected State expenditure is at least 25 percent (or the appropriate sliding scale rate) of the total P&A costs identified in the module. If a State elects to prepay P&A and program management costs, the appropriate NHTSA and FHWA officials must approve the method that the State highway safety agency will use to record the time spent on these activities. During the process of reimbursement, the responsible FHWA and NHTSA officials shall assure that Federal reimbursement for P&A costs at no time exceeds 75 percent (of the applicable sliding scale rate) of the costs accumulated at the time of reimbursement.

CHAPTER III—NATIONAL HIGHWAY  
TRAFFIC SAFETY ADMINISTRATION,  
DEPARTMENT OF TRANSPORTATION

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|                                                                      | <i>Page</i> |
|----------------------------------------------------------------------|-------------|
| Incentive grant criteria for alcohol traffic safety<br>programs..... | 576         |
| Innovative project grants.....                                       | 580         |

## PART 1309—INCENTIVE GRANT CRITERIA FOR ALCOHOL TRAFFIC SAFETY PROGRAMS

### Sec.

- 1309.1 Scope.
- 1309.2 Purpose.
- 1309.3 Definitions.
- 1309.4 General requirements.
- 1309.5 Requirements for a basic grant.
- 1309.6 Requirements for a supplemental grant.
- 1309.7 Award procedures.

**AUTHORITY:** Sec. 2, Pub. L. 96-511, 94 Stat. 2819 (44 U.S.C. 3507); sec. 101 Pub. L. 97-364; 96 Stat. 1738 (23 U.S.C. 408); sec. 208, Pub. L. 95-599; 92 Stat. 2732 (23 U.S.C. 407); 49 CFR 1.48 and 1.50.

**SOURCE:** 48 FR 5553, Feb. 7, 1983, unless otherwise noted. Redesignated at 49 FR 10664, Mar. 22, 1984.

### § 1309.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 408, for awarding incentive grants to States that implement effective programs to reduce drunk driving.

### § 1309.2 Purpose.

The purpose of this part is to encourage States who have adopted or do adopt and implement alcohol traffic safety programs by legislation or regulations which will significantly reduce crashes resulting from persons driving while under the influence of alcohol. The criteria established are intended to ensure that the State alcohol traffic safety programs for which incentive grants are awarded meet or exceed minimum levels designed to reduce drunk driving.

### § 1309.3 Definitions.

(a) "Imprisonment" means confinement in a jail, minimum security facility or in-patient rehabilitation or treatment center.

(b) "Prompt" means that the overall average time from arrest to suspension of a driver's license either cannot exceed an average of 45 days or cannot exceed an average of 90 days and a State submits a plan showing how it intends to achieve a 45 day average.

(c) "Repeat offender" means any person convicted of an alcohol-related traffic offense more than once in five years.

(d) "Suspension" means:

(1) For first offenses, the temporary debarring of all driving privileges for a minimum of 30 days and then the suspension for a minimum 60 days of a restricted provisional or conditional license permitting a person to drive only for the purposes of going from a residence or from a place of employment or to and from a mandated alcohol education or treatment program. A restricted, provisional or conditional license can only be issued in accordance with Statewide published guidelines and in exceptional circumstances specific to the offender.

(2) For refusal to take a chemical test, first offense, the temporary debarring of all driving privileges for 90 days.

(3) For second and subsequent offenses, including the refusal to take a chemical test, the temporary debarring of all driving privileges for one year or longer.

### § 1309.4 General requirements.

(a) *Certification requirements.* To qualify for a grant under 23 U.S.C. 408, a State must, for each year it seeks to qualify:

(1) Meet the requirements of § 1309.5 and, if applicable, the requirements of § 1309.6;

(2) Submit a certification to the Director, Office of Alcohol Countermeasures, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590 that: (i) It has an alcohol traffic safety program that meets those requirements. If the certification is based upon prior adoption of a criterion, a State must provide information showing that it has been actively implementing that criterion during the four years prior to application for a grant, (ii) it will use the funds awarded under 23 U.S.C. 408 only for the implementation and enforcement of alcohol traffic safety programs, and (iii) it will maintain its aggregate expenditures from all other sources for its existing alcohol traffic safety programs at or above the average level of such expenditures in fiscal years 1981 and 1982 (either State or Federal fiscal year 1981 and 1982 can be used); and

After being informed by NHTSA, it is eligible for a grant, submit, within 120 days, to the agency an alcohol safety plan for one, two or three years, as applicable, that describes the programs the State is and will be implementing in order to be eligible for grants and provides the necessary information, identified in §§ 1309.5-1309.6, to demonstrate that the programs comply with the applicable criteria. The plan must also describe the specific supplemental criteria adopted by a State are related to the State's overall alcohol traffic safety program.

**Limitations on grants.** A State may receive a grant for up to three fiscal years subject to the following limitations:

(1) The amount received as a basic grant shall not exceed 30 percent of a State's 23 U.S.C. 402 apportionment for fiscal year 1983.

(2) The amount received as a supplemental grant shall not exceed 20 percent of a State's 23 U.S.C. 402 apportionment for fiscal year 1983.

(3) In the first fiscal year the State receives a grant, it shall be reimbursed up to 75 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 408;

(4) In the second fiscal year the State receives a grant, it shall be reimbursed for up to 50 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 408; and

(5) In the third fiscal year the State receives a grant, it shall be reimbursed up to 25 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 408.

Approved by the Office of Management and Budget under control number 2127-0111

FR 5553, Feb. 7, 1983; 48 FR 31197, July 1983. Redesignated and amended at 49 FR 10664, Mar. 22, 1984]

### 1309.5 Requirements for a basic grant.

To qualify for a basic incentive grant, a State must have in place and implement or adopt and implement the following requirements:

(a)(1) The prompt suspension, for a period not less than 90 days in the

case of a first offender and not less than one year in the case of a repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and (i) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer.

(2) To demonstrate compliance, a State shall submit a copy of the law or regulation implementing the mandatory license suspension, information on the number of licenses suspended, the length of the suspension for first-time and repeat offenders and for refusals to take chemical tests and the average number of days it took to suspend the licenses from date of arrest. A State can provide the necessary data based on a statistically valid sample.

(b)(1) A mandatory sentence, which shall not be subject to suspension or probation, of imprisonment for not less than 48 consecutive hours, or not less than 10 days of community service for any person convicted of driving while intoxicated more than once in any five year period.

(2) To demonstrate compliance a State shall submit a copy of its law adopting this requirement and data on the number of people convicted of DWI more than once in any five years, what general types of confinement are being used, and the sentences for those persons. A State can provide the necessary data based on a statistically valid sample.

(c)(1) Establishing that any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

(2) To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(d)(1) Increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

(2) To demonstrate compliance, a State shall submit data showing that it has increased its enforcement and public information efforts.

[48 FR 5553, Feb. 7, 1983; 48 FR 31197, July 7, 1983. Redesignated at 49 FR 10664, Mar. 22, 1984]

**§ 1309.6 Requirements for a supplemental grant.**

(a) To qualify for a supplemental grant of 20 percent of its 23 U.S.C. 402 apportionment for fiscal year 1983, a State must have in place and implement or adopt and implement a license suspension system in which the average time from date of arrest to suspension of a license does not exceed an average of 45 days, and

(b) Have in place and implement or adopt and implement eight of the following twenty-one requirements:

(1) Enactment of a law that raises, either immediately or over a period of three years, the minimum age for drinking any alcoholic beverages to 21. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(2) Coordination of State alcohol highway safety programs. To demonstrate compliance, a State shall submit information explaining how the work of the different State agencies involved in alcohol traffic safety programs is coordinated.

(3) Rehabilitation and treatment programs for persons arrested and convicted of alcohol-related traffic offenses. To demonstrate compliance, a State shall submit a copy of its law or regulation adopting this requirement, and a copy of the minimum standards set for rehabilitation and treatment programs by the State.

(4) Establishment of State Task Forces of governmental and non-governmental leaders to increase awareness of the problem, to apply more effectively drunk driving laws and to involve governmental and private sector leaders in programs attacking the drunk driving problem. To demonstrate compliance a State shall submit a copy of the executive order, regulation, or law setting up the task force and a description of how the interests of local communities are represented on the task force.

(5) A Statewide driver record system readily accessible to the courts and the public which can identify drivers repeatedly convicted of drunk driving. Conviction information must be recorded in the system within 30 days of a conviction, license sanction or the completion of the appeals process. Information in the record system must be retained for at least five years. The public shall have access to those portions of a driver's record that are not protected by Federal or State confidentiality or privacy regulations. To demonstrate compliance, a State shall submit a description of its record system discussing its accessibility to prosecutors, the courts and the public and providing data showing that the time required to enter alcohol-related convictions into the system is not greater than 30 days. A State shall also submit information showing that the data is retained in the system for at least 5 years.

(6) Establishment in each major political subdivision of a locally coordinated alcohol traffic safety program which involves enforcement, adjudication, licensing, public information, education, prevention, rehabilitation and treatment and management and program evaluation. In small States local coordination may be demonstrated by showing that the interests of the local communities are recognized and coordinated by the State program. To demonstrate compliance, a State shall submit a description of the number of programs, type of programs and percentage of the State population covered by such local programs.

(7) Prevention and long-term education programs on drunk driving. To demonstrate compliance, a State shall submit a description of its prevention and education program, discussing how it is related to changing societal attitudes and norms against drunk driving with particular attention to the implementation of a comprehensive youth alcohol traffic safety program, and the involvement of private sector groups and parents.

(8) Authorization for courts to conduct pre- or post-sentence screenings of convicted drunk drivers. To demonstrate compliance, a State shall submit a copy of its law adopting this require-

and a brief description of its testing process.

Development and implementation of State-wide evaluation system to ensure program quality and effectiveness. To demonstrate compliance, a State shall provide a copy of the executive order, regulation or law setting the evaluation program and a copy of the evaluation plan.

(1) Establishment of a plan for achieving self-sufficiency for the State's total alcohol traffic safety program. To demonstrate compliance, a State shall provide a copy of the plan. Significant progress toward achieving financial self-sufficiency must be shown in subsequent years.

(2) Use of roadside sobriety checks as part of a comprehensive alcohol enforcement program. To demonstrate compliance, a State shall submit information showing that it is systematically using roadside sobriety checks. In addition, a State shall provide a copy of its regulation or policy authorizing the use of roadside checks.

(3) Establishment of programs to encourage citizen reporting of alcohol-related traffic offenses to the police. To demonstrate compliance, a State shall submit a copy of its citizen reporting guidelines or policy and data on the degree of citizen participation, the number of citizen reports and the number of related arrests. A State can provide the necessary data based on a statistically valid sample.

(4) Establishment of a 0.08 percent blood alcohol concentration as presumptive evidence of driving while under the influence of alcohol. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(5) Adoption of a one-license/one-record policy. In addition, the State shall fully participate in the National Driver Register and the Driver License Compact. To demonstrate compliance, a State shall submit a copy of the executive order, regulation or law showing that the State is a member of the Driver License Compact and has adopted a one-license/one-record policy, and is participating in the National Driver Register.

(6) Authorization for the use of a preliminary breath test where there is

probable cause to suspect a driver is impaired. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(16) Limitations on plea-bargaining in alcohol-related offenses. To demonstrate compliance, a State shall submit a copy of its law or court guidelines requiring that no alcohol-related charge be reduced to a non-alcohol-related charge or probation without judgment be entered without a written declaration of why the action is in the interest of justice. If a charge is reduced, the defendant's driving record must reflect that the reduced charge is alcohol-related.

(17) Provide victim assistance and victim restitution programs and require the use of a victim impact statement prior to sentencing in all cases where death or serious injury results from an alcohol-related traffic offense. To demonstrate compliance, a State shall submit a description of its victim assistance and restitution programs, and its use of victim impact statements.

(18) Mandatory impoundment or confiscation of license plate/tags of any vehicle operated by an individual whose license has been suspended or revoked for an alcohol-related offense. Any such impoundment or confiscation shall be subject to the lien or ownership right of third parties without actual knowledge of the suspension or revocation. To demonstrate compliance a State shall submit a copy of its law adopting this requirement.

(19) Enactment of legislation or regulations authorizing the arresting officer to determine the type of chemical test to be used to measure intoxication and to authorize the arresting officer to require more than one chemical test. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(20) Establishment of liability against any person who serves alcoholic beverages to an individual who is visibly intoxicated. To demonstrate compliance, a State shall submit a copy of the law or court decision of a State's highest court establishing that liability.

(21) Use of innovative programs. To demonstrate compliance a State shall

submit a description of its program and an explanation showing that the program will be as effective as any of the programs adopted to comply with the other supplemental criteria.

(c) To qualify for a supplemental grant of 10 percent of its 23 U.S.C. 402 apportionment for fiscal year 1983, a State must: (1) Have in place and implement or adopt and implement a license suspension system in which the average time from date of arrest to suspension of a license does not exceed 45 days; and (2) have in place and implement or adopt and implement four of the twenty-one requirements specified in paragraph (b).

(d) To qualify for a supplemental grant for a second and a third year, a State must:

(1) Show that it has increased its performance for each of the requirements it adopted in the prior year, and

(2) Adopt two more requirements from paragraph (b) for each subsequent year, except that a State does not have to implement more than a total of fifteen criteria.

[48 FR 5553, Feb. 7, 1983; 48 FR 31197, July 7, 1983. Redesignated at 49 FR 10664, Mar. 22, 1984]

#### § 1309.7 Award procedures.

For each Federal fiscal year, grants under 23 U.S.C. 408 shall be made to eligible States upon submission of the alcohol safety plan and certification required by § 1309.4. Such grants shall be made until all eligible States have received a grant or until there are insufficient funds to award a grant to a State. Time of submission shall be determined by the postmark for certifications delivered through the mail and by stamped receipt for certifications delivered in person.

### PART 1317—INNOVATIVE PROJECT GRANTS

Sec.

1317.1 Scope.

1317.2 Purpose.

1317.3 Solicitation of proposals.

1317.4 Project eligibility.

1317.5 Preapplication procedure.

1317.6 Project review procedure.

1317.7 Limitation on project funding.

1317.8 Length of projects.

Sec.

1317.9 Project reporting.

#### APPENDIX A

AUTHORITY: Sec. 2, Pub. L. 96-511, 94 Stat. 2819 (44 U.S.C. 3507); sec. 101 Pub. L. 96-364; 96 Stat. 1738 (23 U.S.C. 408); sec. 20 Pub. L. 95-599; 92 Stat. 2732 (23 U.S.C. 407); 49 CFR 1.48 and 1.50.

SOURCE: 45 FR 84038, Dec. 22, 1980, unless otherwise noted. Redesignated at 49 FR 10664, Mar. 22, 1984.

#### § 1317.1 Scope.

This part establishes criteria and administrative procedures for awards of innovative project grants to States and their political subdivisions, and to nonprofit organizations including volunteer groups.

#### § 1317.2 Purpose.

The purpose of this part is to encourage innovation in solving highway safety problems by funding highway safety projects that apply original and creative methods, use existing methods in original or creative ways, or use new techniques to evaluate existing methods.

#### § 1317.3 Solicitation of proposals.

The agency shall publish a call for project preapplication submissions in the FEDERAL REGISTER, the Commerce Business Daily, and newsletters of the National League of Cities, National Association of Counties, and National Association of Mayors. It shall forward solicitation announcements concurrently to all Governor's Highway Safety Representatives and to the regional offices of the National Highway Traffic Safety Administration and the Federal Highway Administration.

#### § 1317.4 Project eligibility.

Eligible projects include, but are not limited to those in following categories:

(a) Accident reduction areas, such as traffic enforcement, speed limit violations, alcohol and drug abuse, occupant restraint systems, motorcycle operation, pedestrian behavior, and roadside and roadway hazards.

(b) System support areas, such as vehicle inspection, driver licensing and education, traffic courts and records.

agency response systems, debris control and cleanup, and public information and education.

System development and improvement, such as problem analysis, effectiveness measures, evaluation methodology, management techniques, and citizen participation.

#### 7.5 Preapplication procedure.

(a) To be considered for an innovative project grant, an agency or organization shall submit a preapplication set out in Appendix A of this part.

(b) A nonprofit organization whose project involves activities in more than one State shall submit a preapplication directly to the NHTSA Associate Administrator for Traffic Safety Programs. Each other applicant shall, in addition, submit a copy of the preapplication to the State Highway Safety Agency for the State of which it is a constituent part or in which it is located.

(c) The State Highway Safety Agency shall promptly forward each application, together with any comments it may have, to the appropriate NHTSA Regional Office. If the project involves safety activities related to highways, the NHTSA Regional Office shall forward the preapplication to the Federal Highway Administration Division Administrator for the State in which the preapplicant is located. The Regional Offices and the FHWA Division Administrators shall comment on each project and promptly submit each one to the NHTSA Associate Administrator for Traffic Safety Programs.

#### 7.6 Project review procedure.

(a) The agency shall review each preapplication to determine which deserves warrant further development. The agency shall notify each preapplicant of its determination within 45 days of its receipt of the preapplication. The agency shall request detailed proposals that clarify and amplify the preapplications from those applicants whose projects were determined to warrant further development.

(b) The detailed proposals shall be forwarded to a panel of traffic safety experts whose members shall be selected based on their experience in relevant

fields of endeavor. To the extent that funds permit, the agency will secure experts from outside the agency to assist in the proposal evaluation. The panel shall review the technical merits of each proposal and rank the proposals in accordance with the criteria of paragraph (c) of this section.

(c) In reviewing any project the panel shall consider the following criteria:

(1) The innovative character of the project;

(2) The project's impact on highway safety;

(3) Its feasibility in light of the facilities, resources, time and expertise available;

(4) Its adaptability to other jurisdictions;

(5) Its low cost or cost-effectiveness;

(6) Its public acceptance and suitability for public participation;

(7) Its freedom from the need for enabling legislation or governmental reorganization;

(8) Its consistency with policies of curbing inflation and saving energy;

(9) Its ability to unify existing highway safety programs;

(10) Its relationship to the 18 Highway Safety Program Standards; and

(11) Its suitability for evaluation.

(d) Based on the panel's review and ranking, the agency shall determine the projects to be funded and shall notify each applicant of its determination. The list of awards shall also be published in the FEDERAL REGISTER.

[45 FR 84038, Dec. 22, 1980; 46 FR 32, Jan. 2, 1981. Redesignated at 49 FR 10664, Mar. 22, 1984]

#### § 1317.7 Limitation on project funding.

(a) A project funded under 23 U.S.C. 402 or 403 shall not be eligible for funding under the innovative grant program.

(b) The funds for any individual project in any fiscal year shall not exceed 10 percent of the funds appropriated for 23 U.S.C. 407 for the fiscal year in which the grant is awarded.

#### § 1317.8 Length of projects.

Project operational periods exclusive of the planning and reporting phases



shall be limited to three years. The agency may extend an approved project for a period of time not to exceed two years, based on the progress toward project objectives, justification for continued support, the reasonableness of the project budget for continuation, and the availability of Federal funds.

§ 1317.9 Project reporting.

Each grant recipient shall submit the following reports to the NHTSA Associate Administrator for Traffic Safety Programs: (a) Quarterly progress reports, (b) annual evaluation reports, and (c) a final project report. The agency shall forward copies of the reports, as appropriate, to the State Highway Safety Agency for the State of which the grantee is a constituent part or in which it is located.

## APPENDIX

Standard and Optional Forms Facsimile Handbook

SF 424 (Page 1)

| FEDERAL ASSISTANCE                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                           | 2. APPLICANT'S APPLICATION                                                                                                                                                                                                     | 3. STATE APPLICATION IDENTIFIER |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| 1. TYPE OF ACTION<br><input type="checkbox"/> PREAPPLICATION<br><input type="checkbox"/> APPLICATION<br><input type="checkbox"/> NOTIFICATION OF EVENT (Rpt.)<br><input type="checkbox"/> REPORT OF FEDERAL ACTION                                                                                                                                                                                                                                                                              | a. NUMBER<br>b. DATE Year month day<br>10 | a. NUMBER<br>b. DATE Year month day<br>10                                                                                                                                                                                      |                                 |
| 4. LOCAL APPLICANT/RESPONSIBLE<br>a. Applicant Name<br>b. Organization Unit<br>c. Street/P.O. Box<br>d. City<br>e. State<br>f. Contact Person (Name & telephone No.)                                                                                                                                                                                                                                                                                                                            |                                           | 5. FEDERAL EMPLOYER IDENTIFICATION NO.<br>a. NUMBER<br>b. TITLE<br>(Print/Typed/Typed)                                                                                                                                         |                                 |
| 7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                           | 6. TYPE OF APPLICANT/RESPONSIBLE<br>A—State<br>B—Community Action Agency<br>C—Institution<br>D—Individual<br>E—Other (Specify):<br>F—County<br>G—City<br>H—School District<br>I—Special Purpose District<br>J—Other (Specify): |                                 |
| 10. AREA OF PROJECT IMPACT (Name of cities, counties, States, etc.)                                                                                                                                                                                                                                                                                                                                                                                                                             |                                           | 11. ESTIMATED NUMBER OF PERSONS BENEFITING                                                                                                                                                                                     |                                 |
| 12. PROPOSED FUNDING<br>a. FEDERAL \$ .00<br>b. APPLICANT \$ .00<br>c. STATE \$ .00<br>d. LOCAL \$ .00<br>e. OTHER \$ .00<br>f. TOTAL \$ .00                                                                                                                                                                                                                                                                                                                                                    |                                           | 13. TYPE OF APPLICATION<br>A—New<br>B—Continuation<br>C—Supplemental Grant<br>D—Other (Specify):                                                                                                                               |                                 |
| 14. CONGRESSIONAL DISTRICTS OF:<br>a. APPLICANT<br>b. PROJECT<br>14. PROJECT START DATE Year month day<br>15. PROJECT DURATION Months<br>16. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY Year month day                                                                                                                                                                                                                                                                                    |                                           | 17. TYPE OF CHANGE (For 12 c or 13 d)<br>A—Increase Budget<br>B—Decrease Budget<br>C—Increase Duration<br>D—Decrease Duration<br>E—Continuation<br>F—Other (Specify):                                                          |                                 |
| 18. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)                                                                                                                                                                                                                                                                                                                                                                                                                             |                                           | 19. EXISTING FEDERAL IDENTIFICATION NUMBER                                                                                                                                                                                     |                                 |
| 20. REMARKS ADDED<br><input type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                   |                                           | 21. REMARKS ADDED<br><input type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                  |                                 |
| 22. TYPE OF APPLICANT/RESPONSIBLE THAT IS:<br>a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached conditions of the contract if approved.<br>b. If required by GHS Circular A-90 this application was submitted, pursuant to instructions therein, to appropriate departments and all responses are attached. |                                           | No response<br>Response attached<br>(1) <input type="checkbox"/><br>(2) <input type="checkbox"/>                                                                                                                               |                                 |
| 23. CERTIFYING REPRESENTATIVE<br>a. TYPED NAME AND TITLE<br>b. SIGNATURE<br>c. DATE SIGNED Year month day 10                                                                                                                                                                                                                                                                                                                                                                                    |                                           | 24. APPLICATION RECEIVED 10<br>Year month day 10                                                                                                                                                                               |                                 |
| 25. ORGANIZATIONAL UNIT                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                           | 26. ADMINISTRATIVE OFFICE                                                                                                                                                                                                      |                                 |
| 27. ADDRESS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                           | 28. FEDERAL AGENCY IDENTIFICATION                                                                                                                                                                                              |                                 |
| 29. ACTION TAKEN<br><input type="checkbox"/> a. AWARDED<br><input type="checkbox"/> b. REJECTED<br><input type="checkbox"/> c. RETURNED FOR AMENDMENT<br><input type="checkbox"/> d. DEFERRED<br><input type="checkbox"/> e. WITHDRAWN                                                                                                                                                                                                                                                          |                                           | 30. FUNDING<br>a. FEDERAL \$ .00<br>b. APPLICANT \$ .00<br>c. STATE \$ .00<br>d. LOCAL \$ .00<br>e. OTHER \$ .00<br>f. TOTAL \$ .00                                                                                            |                                 |
| 31. ACTION DATE Year month day 10                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                           | 32. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)                                                                                                                                                             |                                 |
| 33. STARTING DATE Year month day 10                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                           | 34. ENDING DATE Year month day 10                                                                                                                                                                                              |                                 |
| 35. REMARKS ADDED<br><input type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                   |                                           | 36. REMARKS ADDED<br><input type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                  |                                 |
| 37. FEDERAL AGENCY A-90 ACTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                           | 38. FEDERAL AGENCY A-90 OFFICIAL (Name and telephone no.)                                                                                                                                                                      |                                 |

424-102

STANDARD FORM 424 PAGE 1 (Rev. 4-77)  
Revised by GHS Circular A-90

SF 424 (Page 2)

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**SECTION IV—REMARKS** *(Please reference the proper item number from Sections I, II or III, if applicable)*

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STANDARD FORM 424 (Rev. 1-77)

## GENERAL INSTRUCTIONS

This is a multi-purpose standard form. First, it will be used by applicants as a required sheet for preapplications and applications submitted in accordance with OMB Circular A-102. Second, it will be used by Federal agencies to report to clearinghouses on major actions taken on applications reviewed by clearinghouses in accordance with OMB Circular A-102. Third, it will be used by Federal agencies to notify States of grants-in-aid awarded in accordance with Treasury Circular 1082. Fourth, it may be used, on an optional basis, as a notification of intent from applicants to clearinghouses, as an early initial notice that Federal assistance is to be applied for (clearinghouse procedures will govern).

## APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk "\*", and use the remarks section on the back of the form. An explanation follows for each item:

### Items

Mark appropriate box Pre-application application guidance is in OMB Circular A-102 and Federal agency program instructions. Notification of intent guidance is Circular A-95 and procedures from clearinghouse. Applicant will not use "Report of Federal Action" box.

1. Applicant's own control number, if desired.

2. Date Section I is prepared.

3. Number assigned by State clearinghouse, or if delegated by State, by areawide clearinghouse. All requests to Federal agencies must contain this identifier if the program is covered by Circular A-95 and referred by applicable State/areawide clearinghouse procedures. If in doubt, consult clearinghouse.

4. Date applicant notified of clearinghouse identifier.

5. Legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request.

6. Employer identification number of applicant as assigned by Internal Revenue Service.

7. Use Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint-funding) write multiple and explain in remarks. If unknown, cite Public Law or U.S. Code.

8. Program title from Federal Catalog. Abbreviate if necessary.

9. Brief title and appropriate description of project. For notification of intent, continue in remarks section if necessary to convey proper description.

10. Mostly self-explanatory. "City" includes town, township or other municipality.

11. Check the type(s) of assistance requested. The definitions of the terms are:

A. Basic Grant. An original request for Federal funds. This would not include

any contribution provided under a supplemental grant.

B. Supplemental Grant. A request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share).

C. Loan. Self explanatory.

D. Insurance. Self explanatory.

E. Other. Explain on remarks page.

10. Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit affected, list it rather than subunits.

11. Estimated number of persons directly benefiting from project.

12. Use appropriate code letter. Definitions are:

A. New. A submittal for the first time for a new project.

B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year.

C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease).

D. Continuation. An extension for an additional funding/budget period for a project the agency initially agreed to fund for a definite number of years.

E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged.

13. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of the change. For decreases enclose the amount in parentheses. If both basic and supplemental amounts are

included, breakout in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 13a, amount requested from Federal Government; 13b, amount applicant will contribute; 13c, amount from State, if applicant is not a State; 13d, amount from local government, if applicant is not a local government; 13e, amount from any other sources, explain in remarks.

14a. Self explanatory.

14b. The district(s) where most of actual work will be accomplished. If city-wide of State-wide, covering several districts, write "city-wide" or "State-wide".

15. Complete only for revisions (Item 12c), or augmentation (12e).

16. Approximate date project expected to begin (usually associated with estimated date of availability of funding).

17. Estimated number of months to complete project after Federal funds are available.

18. Estimated date preapplication/application will be submitted to Federal agency if this project requires clearinghouse review. If review not required, this date would usually be same as date in item 2b.

19. Existing Federal identification number if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA".

20. Indicate Federal agency to which this request is addressed. Street address not required, but do use ZIP.

21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached.

### APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete Items 23a, 23b, and 23c. If clearinghouse review is required, Item 22b must be fully completed. An explanation follows for each item:

#### Items

22b. List clearinghouses to which submitted and show in appropriate blocks the status of their responses. For more than three clearinghouses, continue in remarks section. All written comments submitted by or through clearinghouses must be attached.

23a. Name and title of authorized representative of legal applicant.

23b. Self explanatory.

23c. Self explanatory.

*Note:* Applicant completes only Sections I and II. Section III is completed by Federal agencies.

### FEDERAL AGENCY PROCEDURES FOR SECTION III

If applicant-supplied information in Sections I and II needs no updating or adjustment to fit the final Federal action, the Federal Agency will complete Section III only. An explanation for each item follows:

#### Items

24. Executive department or independent agency having program administration responsibility.

25. Self explanatory.

26. Primary organizational unit below department level having direct program management responsibility.

27. Office directly monitoring the program.

28. Use to identify non-award actions where Federal grant identifier in Item 30 is not applicable or will not suffice.

29. Complete address of administering office shown in Item 26.

30. Use to identify award actions where different from Federal application identifier in Item 28.

31. Self explanatory. Use remarks section to amplify where appropriate.

32. Amount to be contributed during the first funding/budget period by each contrib-

utor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 32a, amount awarded by Federal Government; 32b, amount applicant will contribute; 32c, amount from State, if applicant is not a State; 32d, amount from local government if applicant is not a local government; 32e, amount from any other sources, explain in remarks.

33. Date action was taken on this request.

34. Date funds will become available.

35. Name and telephone no. of agency person who can provide more information regarding this assistance.

**Date after which funds will no longer available.**

**Check appropriate box as to whether on IV of form contains Federal re- s and/or attachment of additional re- s.**

**For use with A-95 action notices only. and telephone of person who can e that appropriate A-95 action has taken—if same as person shown in 35, write "same". If not applicable, "NA".**

**Federal Agency Procedures—Special Considerations**

**Treasury Circular 1082, compliance. ral agency will assure proper comple- of Sections I and III. If Section I is ; completed by Federal agency, all ap- ble items must be filled in. Addresses of : Information Reception Agencies RA's) are provided by Treasury Depart-**

**ment to each agency. This form replaces SF 240, which will no longer be used.**

**B. OMB Circular A-95 compliance.** Federal agency will assure proper completion of Sections I, II, and III. This form is required for notifying all reviewing clearinghouses of major actions on all programs reviewed under A-95. Addresses of State and areawide clearinghouses are provided by OMB to each agency. Substantive differences between applicant's request and/or clearinghouse recommendations, and the project as finally awarded will be explained in A-95 notifications to clearinghouses.

**C. Special note.** In most, but not all States, the A-95 State clearinghouse and the (TC 1082) SCIRA are the same office. In such cases, the A-95 award notice to the State clearinghouse will fulfill the TC 1082 award notice requirement to the State SCIRA. Duplicate notification should be avoided.

**PREAPPLICATION FOR FEDERAL ASSISTANCE**

**PART II**

**Does this assistance request require State, local, regional or other priority rating? \_\_\_\_**  
**s \_\_\_\_ No**

**Does this assistance request require State or local advisory, educational or health clearance? \_\_\_\_**  
**Yes \_\_\_\_ No**

**Does this assistance request require Clearinghouse review? \_\_\_\_ Yes \_\_\_\_ No**

**Does this assistance request require State, local, regional or other planning approval? \_\_\_\_**  
**Yes \_\_\_\_ No**

**Is the proposed project covered by an approved comprehensive plan? \_\_\_\_ Yes \_\_\_\_ No**

**Will the assistance requested serve a Federal installation? \_\_\_\_ Yes \_\_\_\_ No**

**Will the assistance requested be on Federal land or installation? \_\_\_\_ Yes \_\_\_\_ No**

**Will the assistance requested have an effect on the environment? \_\_\_\_ Yes \_\_\_\_ No**

**Will the assistance requested cause the displacement of individuals, families, businesses, r farms? \_\_\_\_ Yes \_\_\_\_ No**

**Is there other related assistance for this project previous, pending, or anticipated? \_\_\_\_**  
**es \_\_\_\_ No**

**Is the project in a designated flood hazard area? \_\_\_\_ Yes \_\_\_\_ No**

## PART III—PROJECT BUDGET

| Federal Catalog Number<br>(a) | Type of Assistance<br>Loan, Grant, etc.<br>(b) | First Budget Period<br>(c) | Balance of Project<br>(d) | Total<br>(e) |
|-------------------------------|------------------------------------------------|----------------------------|---------------------------|--------------|
| 1.                            |                                                |                            |                           |              |
| 2.                            |                                                |                            |                           |              |
| 3.                            |                                                |                            |                           |              |
| 4.                            |                                                |                            |                           |              |
| 5.                            |                                                |                            |                           |              |
| 6. Total Federal Contribution |                                                | \$                         | \$                        | \$           |
| 7. State Contribution         |                                                |                            |                           |              |
| 8. Applicant Contribution     |                                                |                            |                           |              |
| 9. Other Contributions        |                                                |                            |                           |              |
| 10. Totals                    |                                                | \$                         | \$                        | \$           |

## PART IV—PROGRAM NARRATIVE STATEMENT

(Attach per instruction)

OMB Approval No. 80-R0187

## INSTRUCTIONS

## PART II

Negative answers will not require an explanation unless the Federal agency requests more information at a later date. Provide supplementary data for all "Yes" answers in the space provided in accordance with the following instructions:

Item 1—Provide the name of the governing body establishing the priority system and the priority rating assigned to this project.

Item 2—Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval.

Item 3—Attach the clearinghouse comments for the application in accordance with the instructions contained in Office of Management and Budget Circular No. A-95. If comments were submitted previously with a preapplication, do not submit them again but any additional comments received from

the clearinghouse should be submitted with this application.

Item 4—Furnish the name of the approving agency and the approval date.

Item 5—Show whether the approved comprehensive plan is State, local or regional, or if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination and state whether this project is in conformance with the plan.

Item 6—Show the population residing or working on the Federal installation who will benefit from this project.

Item 7—Show the percentage of the project work that will be conducted on federally-owned or leased land. Give the name of the Federal installation and its location.

Item 8—Describe briefly the possible beneficial and harmful impact on the environment of the proposed project. If an adverse environmental impact is anticipated, explain what action will be taken to minimize the impact. Federal agencies will provide separate instructions if additional data is needed.

Item 9—State the number of individuals, families, businesses, or farms this project

displace. Federal agencies will provide separate instructions if additional data is needed.

m 10—Show the Federal Domestic Assistance Catalog number, the program name, the type of assistance, the status and amount of each project where there is no previous, pending or anticipated assistance. Use additional sheets, if needed.

m 11—Contact the Federal agency concerning the provisions of the Flood Disaster Prevention Act of 1973 (P.L. 93-234).

**PART III**

Complete: Lines 1-5—Columns (a)-(e). Enter the catalog numbers shown in the log of Federal Domestic Assistance in Column (a) and the type of assistance in Column (b). For each line entry in Columns (a) and (b), enter in Columns (c), (d), and (e) the estimated amounts of Federal funds expected to support the project. Columns (c) and (d) may be left blank, if not applicable.

Line 6—Show the totals for Lines 1-5 for Columns (c), (d), and (e).

Line 7—Enter the estimated amounts of State assistance, if any, including the value of in-kind contributions, in Col-

umns (c), (d), and (e). Applicants which are States or State agencies should leave Line 7 blank.

Line 8—Enter the estimated amounts of funds and value of in-kind contributions the applicant will provide to the program or project in Columns (c), (d), and (e).

Line 9—Enter the amount of assistance including the value of in-kind contributions, expected from all other contributors in Columns (c), (d), and (e).

Line 10—Enter the totals of Columns (c), (d), and (e).

**PART IV**

The program narrative statement should be brief and describe the need, objectives, method of accomplishment, the geographical location of the project, and the benefits expected to be obtained from the assistance. The statement should be typed on a separate sheet of paper and submitted with the preapplication. Also attach any data that may be needed by the grantor agency to establish the applicant's eligibility for receiving assistance under the Federal program(s).





# SUBJECT INDEX

## FEDERAL HIGHWAY ADMINISTRATION

### A

*Part/Section*

|                                                                         |                                  |
|-------------------------------------------------------------------------|----------------------------------|
| <b>Adopted:</b>                                                         |                                  |
| Frontage roads.....                                                     | 620.203                          |
| Signs .....                                                             | 750, Subpart D                   |
| Vehicles.....                                                           | 752                              |
| <b>Access:</b>                                                          |                                  |
| Control on R-O-W defense roads.....                                     | 660, Subpart E                   |
| Information Center.....                                                 | 752                              |
| Joint occupancy.....                                                    | 1.23                             |
| Restoration of access.....                                              | 712, Subpart H                   |
| Right-of-way costs.....                                                 | 710, Subpart C                   |
| Safety rest areas.....                                                  | 752                              |
| Ident locations (Standard 9).....                                       | 1204.4                           |
| Ident reduction.....                                                    | 924                              |
| Counting .....                                                          | 11, Subpart C;<br>140, Subpart C |
| <b>Acquisition:</b>                                                     |                                  |
| Function (right-of-way):                                                |                                  |
| Administrative settlements, legal settlements, and<br>court awards..... | 712, Subpart D                   |
| Federal land transfers and direct Federal .....                         | 712, Subpart E                   |
| Functional replacement of real property.....                            | 712, Subpart F                   |
| General provisions and project procedures .....                         | 712, Subpart B                   |
| Land service facilities.....                                            | 712, Subpart H                   |
| Negotiations.....                                                       | 712, Subpart C                   |
| Policy .....                                                            | 712, Subpart A                   |
| Revolving fund.....                                                     | 712, Subpart G                   |
| Junkyards .....                                                         | 751                              |
| Outdoor advertising.....                                                | 750, Subpart D                   |
| Procedures for landscaping and scenic enhancement .....                 | 752                              |
| Right-of-way by State .....                                             | 1.23(a)                          |
| Administrative settlement costs—contract claims .....                   | 140, Subpart E                   |
| Advance construction of Federal-aid project.....                        | 630, Subpart G                   |
| Advance right-of-way revolving funds .....                              | 130, Subpart D                   |
| Advertising. <i>See</i> Highway beautification; Outdoor advertising.    |                                  |
| Advertising for bids, Federal-aid contracts .....                       | 635.107                          |
| Agreement(s). <i>See</i> Contracts.                                     |                                  |
| Aid systems, motorist.....                                              | 655, Subpart G                   |
| Air quality guidelines.....                                             | 770                              |
| Arrest and highway improvements.....                                    | 620, Subpart A                   |
| <b>Art space:</b>                                                       |                                  |
| Management.....                                                         | 713, Subpart B                   |
| Use within R-O-W boundaries .....                                       | 1.23                             |
| Annual element.....                                                     | 450, Subpart B                   |
| Antitrust violations. <i>See</i> 49 CFR 29                              |                                  |
| Appalachian contracts .....                                             | 633, Subpart B                   |

|                                                  |                        |
|--------------------------------------------------|------------------------|
| Application of regulations .....                 | 1.38                   |
| Appraisal function .....                         | 720, Subpart B         |
| Archeological site .....                         | 771                    |
| Areawide plan .....                              | 230.103                |
| Audit(s):                                        |                        |
| Advance accounts from R-O-W revolving fund ..... | 130, Subpart D         |
| Consultant agreements .....                      | 172                    |
| Cost principles .....                            | 172                    |
| Interagency expenses .....                       | 140, Subpart H         |
| State contract administration .....              | 140, Subpart H;<br>172 |
| State internal audit responsibility .....        | 12                     |
| Authority, delegation of .....                   | 1.37                   |
| Authorization to proceed on projects .....       | 630.114; 810           |

## B

|                                                                                                  |                                      |
|--------------------------------------------------------------------------------------------------|--------------------------------------|
| Beautification. <i>See</i> Highway beautification.                                               |                                      |
| Bicycle trails .....                                                                             | 652                                  |
| Bikeways and walkways in conjunction with Federal and<br>Federal-aid highways .....              | 652                                  |
| Billboards. <i>See</i> Highway beautification.                                                   |                                      |
| Billing procedures .....                                                                         | 140, Subpart A                       |
| Bond(s):                                                                                         |                                      |
| Advance I.S. construction; interest costs .....                                                  | 630, Subpart G                       |
| Reimbursement .....                                                                              | 140, Subpart F                       |
| Bonus incentive payments for controlling outdoor advertis-<br>ing on the Interstate System ..... | 190                                  |
| Bonus program .....                                                                              | 1.35; 750,<br>Subparts A &<br>G; 190 |
| Bridge(s):                                                                                       |                                      |
| Approach improvements .....                                                                      | 924                                  |
| Concrete bridge decks .....                                                                      | 650, Subpart F                       |
| Construction over Federal dams .....                                                             | 630, Subpart H                       |
| Defense bridges & critical hwy facilities reports .....                                          | 666                                  |
| Design .....                                                                                     | 625                                  |
| Discretionary candidate rating factor .....                                                      | 650, Subpart G                       |
| Erosion control .....                                                                            | 650, Subpart B                       |
| Location and hydraulic design of encroachments on<br>flood plains .....                          | 650, Subpart A                       |
| National inspection standards .....                                                              | 650, Subpart C                       |
| Natural disaster or catastrophic failure .....                                                   | 668                                  |
| Off-system roads .....                                                                           | 922; 924.11                          |
| Pedestrian overpass and underpass .....                                                          | 652                                  |
| Railroad-highway .....                                                                           | 646.210                              |
| Replacement & rehabilitation (HBRR) .....                                                        | 650, Subpart D                       |
| Structures and hydraulics .....                                                                  | 650                                  |
| Tolls. <i>See</i> 49 CFR 310. ....                                                               |                                      |
| Urban TIP process .....                                                                          | 450, Subpart B                       |
| Bus services .....                                                                               | 825                                  |
| Business enterprises, minority, in Federal-aid highway con-<br>struction. ....                   | 230, Subpart B;<br>635, Subpart A    |
| Buy America requirements .....                                                                   | 635.410                              |

# C

|                                                         |                              |
|---------------------------------------------------------|------------------------------|
| ool .....                                               | 656                          |
| ification acceptance .....                              | 640                          |
| ification of speed limit enforcement .....              | 659                          |
| defense.....                                            | 666                          |
| rights:                                                 |                              |
| act, application to contracts .....                     | 633, Subparts A & B; 635.112 |
| Advertising for bids.....                               | 635.107                      |
| Airspace management .....                               | 713.204                      |
| SEO construction contract compliance.....               | 230, Subpart D               |
| SEO on Federal & Federal-aid construction.....          | 230, Subpart A               |
| Contracts and subcontracts .....                        | 172                          |
| Fellowship & scholarship grants .....                   | 260, Subpart A               |
| Metropolitan planning organization .....                | 450.306                      |
| Planning & research & development, contracts .....      | 172                          |
| Project agreements .....                                | 630, Subpart C               |
| Research & development program .....                    | 520.7                        |
| Right-of-way acquisition .....                          | 712.103; 710, Subpart D      |
| Rural highway public transportation .....               | 820.17; 825                  |
| SHA internal compliance program .....                   | 230, Subpart C               |
| State certification approval .....                      | 640.5                        |
| Title VII Program and related statutes.....             | 200                          |
| Urban transportation planning.....                      | 450.114                      |
| ims by Federal-aid contractors .....                    | 635.120                      |
| an Air Act:                                             |                              |
| Air quality guidelines .....                            | 770                          |
| Contract implementation .....                           | 633.107; 633.211             |
| EIS .....                                               | 771                          |
| Urban impact planning process .....                     | 450.114                      |
| nmunity development .....                               | 490, Subpart A               |
| nmuting:                                                |                              |
| Carpool/Vanpool .....                                   | 656                          |
| Bikeways .....                                          | 652                          |
| nppliance with Federal laws and regulations.....        | 1.36                         |
| crete bridge decks .....                                | 650, Subpart F               |
| afflicts of interest.....                               | 1.33                         |
| nstruction and maintenance:                             |                              |
| Certification acceptance .....                          | 640                          |
| Contract procedures .....                               | 635, Subpart A               |
| Force account construction .....                        | 635, Subpart B               |
| General material requirements .....                     | 635, Subpart D               |
| Physical construction authorization.....                | 635, Subpart C               |
| Reconstruction due to natural disaster.....             | 668                          |
| Reconstruction on off-system roads .....                | 922                          |
| Reconstruction on relinquished off-system facility..... | 620, Subpart B               |
| Safety in work zones.....                               | 630, Subpart J               |
| nstruction engineering costs .....                      | 140, Subpart B               |
| nstruction, sampling & testing of materials .....       | 637, Subpart B               |
| nstruction noise .....                                  | 772                          |
| nsultant(s), Engineering .....                          | 1.11; 172; 635.105(d)        |
| nsumer involvement .....                                | 790                          |
| ntract(s):                                              |                              |
| Federal-State agreements:                               |                              |

## Contract(s)—Continued

## Federal-State agreements—Continued

|                          |                |
|--------------------------|----------------|
| Advertising control..... | 190            |
| Airspace.....            | 713.204        |
| Forest highway .....     | 660.111        |
| Project agreements ..... | 630, Subpart C |

## Construction contracts:

## Federal-aid:

|                               |                |
|-------------------------------|----------------|
| Appalachian program.....      | 633, Subpart B |
| Awards .....                  | 635.111        |
| Claims (expenses) .....       | 140, Subpart E |
| Consulting (engineering)..... | 172            |
| General procedures .....      | 635, Subpart A |
| Insurance.....                | 646.105        |
| Required provisions .....     | 633, Subpart A |
| Special provisions.....       | 633, Subpart A |
| Subcontracting .....          | 635, Subpart A |

## Direct Federal:

|                               |                           |
|-------------------------------|---------------------------|
| Forest highways.....          | 660, Subpart A            |
| Labor provisions.....         | 633, Subpart C,<br>App. A |
| Nonsegregated facilities..... | 633, Subpart C            |
| Required provisions .....     | 633, Subpart C            |

## Required provisions:

|                             |                |
|-----------------------------|----------------|
| Anticollusion .....         | 635, Subpart A |
| Appalachian program .....   | 633, Subpart B |
| Appraiser contracts .....   | 720, Subpart B |
| Buy America .....           | 635.410        |
| Federal contracts.....      | 633, Subpart C |
| Federal-aid contracts ..... | 633, Subpart A |
| Labor standards .....       | 635.124        |

## Planning and research contracts: Items to be included..... 172

## Other:

|                                              |                |
|----------------------------------------------|----------------|
| Appraisals .....                             | 720, Subpart B |
| Consultants.....                             | 172            |
| Contractor licensing and qualification ..... | 635, Subpart A |
| Insurance:                                   |                |
| Public liability .....                       | 646, Subpart A |
| Railway and highway.....                     | 646, Subpart A |
| Railroad agreements.....                     | 646, Subpart B |
| Relocation .....                             | 740, Subpart A |
| Small business participation.....            | 635, Subpart A |
| Time extensions.....                         | 635, Subpart A |
| Utilities.....                               | 645, Subpart B |

## Convict labor..... 635.124

## Cooperation of governmental instrumentalities .....

|                    |                                                         |
|--------------------|---------------------------------------------------------|
| Copeland Act ..... | 633, Subpart A,<br>App. A: 633,<br>Subpart B, App.<br>B |
|--------------------|---------------------------------------------------------|

## Copyright .....

## Court award (R-O-W acquisition)..... 172

## Court deposits &amp; interest reimbursement..... 712, Subpart D

## Curb ramps..... 710, Subpart C

## Curb ramps..... 625; 652

## D

|                                                              |                |
|--------------------------------------------------------------|----------------|
| use access roads:                                            |                |
| ridges and critical highway facilities report .....          | 666            |
| ederal-aid Highway Systems .....                             | 470, Subpart A |
| ederal land transfers and direct Federal acquisition .....   | 712, Subpart E |
| ational defense highways .....                               | 660, Subpart E |
| se bridges and critical highway facilities reports .....     | 666            |
| se Highways, National System of Interstate .....             | 470.105        |
| titions .....                                                | 1.2            |
| onstration programs:                                         |                |
| avement marking .....                                        | 920            |
| ural highway public transportation .....                     | 820            |
| n:                                                           |                |
| ikeways and walkways .....                                   | 652            |
| efense access roads .....                                    | 660, Subpart E |
|                                                              | 652            |
| ydraulic design of highway encroachment on flood             |                |
| plains .....                                                 | 650.107        |
| ff-system roads .....                                        | 922.13         |
| avement policy .....                                         | 626            |
| ailroad-highway projects .....                               | 646.214        |
| oadside call terminals .....                                 | 650.107        |
| afety (standards 9 and 12) .....                             | 1204.4         |
| tandards for Federal-aid highways .....                      | 625            |
| t Federal:                                                   |                |
| dministering forest highways .....                           | 660, Subpart A |
| onstruction contracts .....                                  | 633, Subpart C |
| mergency Relief .....                                        | 668, Subpart B |
| orest highway .....                                          | 660, Subpart A |
| ighways for National Defense .....                           | 660, Subpart E |
| and acquisition .....                                        | 712.504        |
| tives, issuance of .....                                     | 1.32           |
| ter assistance .....                                         | 668            |
| mination. <i>See</i> Civil rights; Equal employment opportu- |                |
| y.                                                           |                |
| aced persons .....                                           | 740            |
| rsion of highway revenue .....                               | 1.28           |
| tions (23 U.S.C. 323) .....                                  | 712.103(r)     |

## E

|                                                            |                   |
|------------------------------------------------------------|-------------------|
| omic growth center development highways .....              | 490, Subpart A    |
| ation and training programs .....                          | 260               |
| ighway safety .....                                        | 260, Subpart A    |
| ighway technology .....                                    | 260, Subpart A    |
| ighway transportation research and education .....         | 260, Subpart A    |
| tate programs .....                                        | 260, Subpart D    |
| ly and handicapped. <i>See</i> Handicapped persons facili- |                   |
| s.                                                         |                   |
| gency relief program:                                      |                   |
| ederal-aid highways .....                                  | 668 A             |
| ederal roads .....                                         | 668 B             |
| gy conservation .....                                      | 420 A; 630 A; 656 |
| neering and traffic operations .....                       | 620-668           |
| ronment and R-O-W .....                                    | 710 thru 795      |

|                                           |                                                                                  |
|-------------------------------------------|----------------------------------------------------------------------------------|
| Environmental impact statement .....      | 771                                                                              |
| Equal Employment Opportunity:             |                                                                                  |
| Construction contracts .....              | 633, Subpart A<br>App. A, B: 633<br>Subpart B, App.<br>A, B; 230 A: 23<br>D: 172 |
| Hometown or imposed plan .....            | 633, Subpart C                                                                   |
| Right-of-way .....                        | 710.404                                                                          |
| Title VI compliance program .....         | 200                                                                              |
| SHA internal program for compliance ..... | 230, Subpart C                                                                   |
| Equipment:                                |                                                                                  |
| Disposal of (R&D) .....                   | 511.7                                                                            |
| Publicly-owned, use of .....              | 635.119                                                                          |
| Esthetic considerations .....             | 620.203; 771; 752                                                                |

## F

|                                                                                            |                                    |
|--------------------------------------------------------------------------------------------|------------------------------------|
| Federal-aid:                                                                               |                                    |
| Construction contracts (other than Appalachian) .....                                      | 633, Subpart A                     |
| Contracts (Appalachian) .....                                                              | 633, Subpart B                     |
| Emergency relief .....                                                                     | 668, Subpart A                     |
| Highway programs—State internal audit .....                                                | 12                                 |
| Highway systems .....                                                                      | 470, Subpart A                     |
| Program approval and authorization .....                                                   | 630, Subpart A                     |
| Projects—State legal expenses in contract claims .....                                     | 140, Subpart E                     |
| Safer off-system roads program .....                                                       | 922                                |
| Federal land transfers and direct Federal acquisition .....                                | 712, Subpart E                     |
| Federal-State cooperation, authority of State highway department .....                     | 1.3                                |
| Federal-State relationship, certification acceptance .....                                 | 640                                |
| Fellowship and scholarship grants .....                                                    | 260, Subpart A                     |
| Fiscal procedures, State .....                                                             | 160, Subparts A<br>B, and C        |
| Flood(s):                                                                                  |                                    |
| Emergency funds .....                                                                      | 668 A & B                          |
| Highway encroachment on flood plains .....                                                 | 650, Subpart A                     |
| Hazard evaluation, content of EIS .....                                                    | 771.18                             |
| Hazard evaluation guidelines .....                                                         | 650.103                            |
| Force account construction .....                                                           | 635, Subpart B                     |
| Forest roads:                                                                              |                                    |
| Emergency funds .....                                                                      | 668 A & B                          |
| Highway administration .....                                                               | 660, Subpart A                     |
| Forms:                                                                                     |                                    |
| EEO-4 (State highway agency EEO programs) .....                                            | 230, Subpart C                     |
| FHWA 186 (accounting statement, accrued unbilled costs) .....                              | 11.302; 640; 642                   |
| FHWA 1175 (Schedule of projects supplementing advertising control bonus project) .....     | 190                                |
| FHWA 1405 (FHWA contracts and subcontracts awarded to minorities) .....                    | 230.209                            |
| FHWA 1409 (Federal-aid highway construction contractor's semiannual training report) ..... | 230, Subpart A<br>App. E; 640; 642 |
| FHWA 1410 (Federal-aid highway construction semiannual training report) .....              | 230, Subpart A<br>App. F; 640; 642 |

## • Chapters I and II

—C continued

|                                                                                                                                                                  |                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| WA 1421 (Request for use of Federal-aid highway funds for individual education training) .....                                                                   | 260.405                                                                   |
| WA 1424 (Outdoor advertising report) .....                                                                                                                       | 750.308; 640                                                              |
| WA 1434 (Real property acquisition statistics) .....                                                                                                             | 710.206                                                                   |
| WA 1435 (Fellowship in highway safety) .....                                                                                                                     | 260.117                                                                   |
| WA 1439 (Fellowship in highway transportation research) .....                                                                                                    | 260.117                                                                   |
| WA 1446 C (Final inspection and acceptance of Federal-aid project constructed under certification acceptance) .....                                              | 140 A; 640.113                                                            |
| IWA 1447 (Voucher for payment under CA) .....                                                                                                                    | 640.113; 642                                                              |
| IWA 1451 (pavement marking program) .....                                                                                                                        | 920.11(b)(3); 640; 642                                                    |
| IWA 1463 (Scholarship in highway technology) .....                                                                                                               | 260.117                                                                   |
| 2-1 (Federal-aid program data) .....                                                                                                                             | 260.405                                                                   |
| 2-2 (Federal-aid project agreement) .....                                                                                                                        | 140, Subparts C and F; 630, Subpart C, App. A and Subpart G; 260.409; 640 |
| 2-2.1 (Federal-aid project agreement; national cooperative highway research program). .....                                                                      | 630, Subpart C, App. C                                                    |
| 2-2A (Modification of Federal-aid project agreement ....                                                                                                         | 630, Subpart C, App. B; 640                                               |
| 2-20 (Voucher for work performed under provision of the Federal-aid and Federal Highway Acts, as amended). .....                                                 | 140 A; 140.608; 190                                                       |
| 2-37 (Project status record) .....                                                                                                                               | 640; 642                                                                  |
| 2-45 (Bid price data) .....                                                                                                                                      | 640, App.                                                                 |
| 2-47 (Statement of materials & labor used by contractors on highway) .....                                                                                       | 640, App.                                                                 |
| 2-1228 (Relocation assistance and payment statistics)...                                                                                                         | 740.15                                                                    |
| 2-1273 (Required contract provisions, Federal-aid construction contracts). .....                                                                                 | 633, Subpart A, App. A                                                    |
| 2-1286 (Semiannual labor compliance enforcement report) .....                                                                                                    | 640; 642                                                                  |
| 2-1316 (Required contract provisions, Appalachian development highway system) .....                                                                              | 633, Subpart B, App. B                                                    |
| 2-1317 (Additional required contract provisions, Appalachian development highway system and local access road contracts other than construction contracts) ..... | 633, Subpart B, App. C                                                    |
| 2-1391 (Federal-aid highway construction contractors annual EEO report) .....                                                                                    | 230, Subpart A, App. C                                                    |
| 2-1392 (Federal-aid highway construction summary of employment data) .....                                                                                       | 230, Subpart A, App. D                                                    |
| Freedom of Information Act. See 49 CFR 7.                                                                                                                        |                                                                           |
| Guid. See 49 CFR 29                                                                                                                                              |                                                                           |
| 2-1 conservation .....                                                                                                                                           | 630, Subpart A                                                            |



## G

|                                   |                        |
|-----------------------------------|------------------------|
| Geodetic markers.....             | 630, Subpart D         |
| Grade crossing improvements ..... | 646, Subpart A;<br>924 |
| Great River Road.....             | 661                    |

## H

## Handicapped persons facilities:

|                                                     |                |
|-----------------------------------------------------|----------------|
| Carpool/vanpool.....                                | 656            |
| Curb-cut ramps on bikeways & walkways .....         | 652            |
| Design standards at crosswalks .....                | 625            |
| Fellowship & scholarship grants.....                | 260, Subpart A |
| Mass transportation. <i>See</i> 49 CFR 27           |                |
| Rest area facilities.....                           | 625            |
| Rural highway public transportation.....            | 820.15         |
| Urban transportation planning. <i>See</i> 49 CFR 27 |                |

|                            |            |
|----------------------------|------------|
| Hardship acquisition ..... | 712.204(d) |
|----------------------------|------------|

|                                                                                                |      |
|------------------------------------------------------------------------------------------------|------|
| Hayden-Cartwright amendment (23 U.S.C. 126). <i>See</i> Diver-<br>sion of highway revenue..... | 1.28 |
|------------------------------------------------------------------------------------------------|------|

## Hazards:

|                                         |                           |
|-----------------------------------------|---------------------------|
| Flood.....                              | 650, Subpart A            |
| High hazard location (standard 9) ..... | 1204.4                    |
| Pedestrian safety (standard 14).....    | 1204.4                    |
| Railroad-highway (standard 12).....     | 1204.4; 646,<br>Subpart B |
| Reduction program .....                 | 924                       |

## Hearings, public:

|                                                |                |
|------------------------------------------------|----------------|
| Construction authorization, condition for..... | 635, Subpart C |
| Environmental impact.....                      | 771            |
| Flood plain.....                               | 650, Subpart A |
| Land acquisition .....                         | 712.204(e)     |
| Location & design of highways.....             | 790            |
| Relocation program .....                       | 740            |
| Safety sanctions .....                         | 1206.10        |

## Highway beautification:

|                                                                        |                              |
|------------------------------------------------------------------------|------------------------------|
| Bonus program .....                                                    | 190; 750, Subpart<br>A; 1.35 |
| Junkyard control & acquisition.....                                    | 751                          |
| Landscaping & roadside development .....                               | 752                          |
| National standards for directional official signs .....                | 750, Subpart B               |
| Outdoor advertising (acq. rights of sign and sign site<br>owners)..... | 750, Subpart D               |
| Outdoor advertising control .....                                      | 750, Subpart G               |
| Relinquishment .....                                                   | 620.203                      |
| Signs exempt from removal.....                                         | 750, Subpart E               |
| Specific information signs .....                                       | 655, Subpart C               |

|                         |                                                |
|-------------------------|------------------------------------------------|
| Highway Safety Act..... | 655.401; 655,<br>Subpart F; 924;<br>Chapter II |
|-------------------------|------------------------------------------------|

|                                          |                          |
|------------------------------------------|--------------------------|
| Highway systems. <i>See</i> Systems..... | 470, Subparts A<br>and C |
|------------------------------------------|--------------------------|

|                                             |                |
|---------------------------------------------|----------------|
| Highway technology (educ. & training) ..... | 260, Subpart A |
|---------------------------------------------|----------------|

|                             |     |
|-----------------------------|-----|
| Historic preservation ..... | 771 |
|-----------------------------|-----|

|                     |                                     |
|---------------------|-------------------------------------|
| Hometown plan ..... | 230.103; 230.115;<br>633, Subpart C |
|---------------------|-------------------------------------|

## ix to Chapters I and II

|                                                                                             |                                     |
|---------------------------------------------------------------------------------------------|-------------------------------------|
| Hydraulic design of highway encroachment .....                                              | 650, Subpart A                      |
| <b>I</b>                                                                                    |                                     |
| Proposed plan .....                                                                         | 230.103; 230.115;<br>633, Subpart C |
| Permit payments for controlling outdoor advertising on<br>Interstate System .....           | 190                                 |
| Indian reservation public road mileage .....                                                | 460.3                               |
| Information:                                                                                |                                     |
| Brochure of the land acquisition process .....                                              | 712.203(c)                          |
| Centers .....                                                                               | 752                                 |
| Furnished by State highway departments .....                                                | 1.5                                 |
| Freedom of Information Act. <i>See</i> 49 CFR 7.                                            |                                     |
| Signs .....                                                                                 | 750; 855 C                          |
| Informational site(s) .....                                                                 | 750, Subpart A;<br>1.23(b); 1.35    |
| Insurance: Railroad-highway .....                                                           | 646, Subpart A                      |
| Interstate Highway System .....                                                             | 476                                 |
| General .....                                                                               | 476, Subpart A                      |
| Resurfacing, restoration, rehabilitation, reconstruction<br>(4R); urban TIP process .....   | 450, Subpart B                      |
| Withdrawal of interstate segments and substitution of<br>public mass transit projects ..... | 476, Subpart D                      |
| Conventions .....                                                                           | 172; 511.7                          |
| Irregularities in Federal highway program. <i>See</i> 49 CFR 29                             |                                     |
| <b>J</b>                                                                                    |                                     |
| Truckyard control and acquisition .....                                                     | 751                                 |
| <b>K</b>                                                                                    |                                     |
| me.                                                                                         |                                     |
| <b>L</b>                                                                                    |                                     |
| Labor provisions, Direct Federal contract .....                                             | 633, Subpart C,<br>App. A           |
| Labor standards .....                                                                       | 635.124                             |
| Land acquisition .....                                                                      | 712                                 |
| Land service facilities .....                                                               | 712, Subpart H                      |
| Land transfers:                                                                             |                                     |
| Federal and direct Federal acquisition .....                                                | 712, Subpart E                      |
| Relinquishment on R-O-W .....                                                               | 620, Subpart B                      |
| Landscape and roadside development .....                                                    | 752                                 |
| Fast resort housing .....                                                                   | 740, Subpart F                      |
| Licensing and qualification of contractors .....                                            | 635, Subpart A                      |
| Limitation on Federal participation .....                                                   | 1.9                                 |
| <b>M</b>                                                                                    |                                     |
| Maintenance. <i>See also</i> Construction and maintenance.                                  |                                     |
| Bridge decks .....                                                                          | 650.609                             |
| Defense roads .....                                                                         | 660, Subpart E                      |
| Forest highways .....                                                                       | 660.115                             |
| Interstate guidelines .....                                                                 | 635, Subpart E                      |
| Signs .....                                                                                 | 750.707                             |
| State responsibility .....                                                                  | 1.27; 633.208                       |

|                                                       |                                 |
|-------------------------------------------------------|---------------------------------|
| Management and administration.....                    | 1                               |
| Material(s):                                          |                                 |
| Selection .....                                       | 635.410; 635.411                |
| Requirements on Federal-aid highway projects.....     | 635, Subpart D                  |
| Sampling and testing.....                             | 637, Subpart B                  |
| Sites (R-O-W).....                                    | 710, Subpart C                  |
| Mass transit & special use hwy projects.....          | 810                             |
| Mass transit projects, interstate withdrawal for..... | 476, Subpart D                  |
| Metropolitan planning funds.....                      | 450, Subpart C                  |
| Metropolitan planning organization (MPO).....         | 450, Subparts A, B, C           |
| Microfilm of records.....                             | 17                              |
| Military Traffic Management Command .....             | 660, Subpart E                  |
| Minority business enterprises.....                    | 230, Subpart B;<br>635.106; 825 |
| Missile route .....                                   | 660, Subpart E                  |
| Mobile homes—relocation assistance .....              | 740, Subpart E                  |
| Motorist-aid systems .....                            | 655, Subpart G                  |
| Motor carrier. <i>See</i> 49 CFR Chap. III            |                                 |
| Motor carrier route designations (STAA 1982) .....    | 658                             |

## N

|                                                                                                         |                                                      |
|---------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| National bridge inspection standards.....                                                               | 650, Subpart C                                       |
| National cooperative highway research program (NCHRP)                                                   |                                                      |
| Definition.....                                                                                         | 511.3                                                |
| Project agreement.....                                                                                  | 630, Subpart C, App. C                               |
| R&D studies.....                                                                                        | 511.9                                                |
| National defense highways .....                                                                         | 660, Subpart E                                       |
| National Environmental Policy Act (NEPA) .....                                                          | 771                                                  |
| National Highway Institute:                                                                             |                                                      |
| Fellowship & scholarship grants.....                                                                    | 260 Subpart A                                        |
| State and local education & training.....                                                               | 260 Subpart D                                        |
| National Network (commercial vehicles).....                                                             | 658                                                  |
| National Standards:                                                                                     |                                                      |
| Bridge inspection.....                                                                                  | 650, Subpart C                                       |
| Directional and official signs .....                                                                    | 750, Subpart B                                       |
| Regulation by States of outdoor advertising adjacent to Interstate System under 1958 bonus program..... | 750 Subpart A                                        |
| Signs giving specific information .....                                                                 | 655, Subpart C                                       |
| National System of Interstate and Defense Highways .....                                                | 470, Subpart A                                       |
| Noise standards and procedures .....                                                                    | 772                                                  |
| Nonhighway public mass transit project.....                                                             | 476.2                                                |
| Nonsegregated facilities, contract provisions .....                                                     | 633, Subpart A, App. A, B; 633, Subpart B, App. B, D |
| Non-urbanized Public Transportation .....                                                               | 825                                                  |

## O

|                                                         |                    |
|---------------------------------------------------------|--------------------|
| Off-system roads .....                                  | 922; 924           |
| Outdoor advertising:                                    |                    |
| Acquisition of rights of sign and sign site owners..... | 750, Subpart D     |
| Bonus program .....                                     | 1.35; 190; 750.707 |

## Index to Chapters I and II

### Outdoor advertising—Continued

|                                                            |                |
|------------------------------------------------------------|----------------|
| Control .....                                              | 750, Subpart G |
| Directional & official signs .....                         | 750, Subpart B |
| Interstate System, incentive payments for controlling..... | 190            |
| Signs exempt from removal.....                             | 750, Subpart E |
| Specific information signs .....                           | 655, Subpart C |

## P

|                                                                          |                                          |
|--------------------------------------------------------------------------|------------------------------------------|
| Park admission fees .....                                                | 661.5(f)                                 |
| Parking facility .....                                                   | 655, Subpart A;<br>450; 476; 656;<br>810 |
| Parks, protection of .....                                               | 771                                      |
| Parkway for the Mississippi River .....                                  | 661                                      |
| Patented or proprietary items in material selection .....                | 635.411                                  |
| Patent rights .....                                                      | 172; 511.7; 635.411                      |
| Pavement design .....                                                    | 625; 626                                 |
| Pavement marking(s):                                                     |                                          |
| Demonstration program.....                                               | 920                                      |
| New or reconstructed highways .....                                      | 655, Subpart F                           |
| Payback, general .....                                                   | 480                                      |
| Payment procedures, See Parts 130 through 190                            |                                          |
| Payments, State request for .....                                        | 1.31                                     |
| Payroll of public employees .....                                        | 140, Subpart G                           |
| Pedestrian facilities .....                                              | 652; 924                                 |
| Pedestrian safety (standard 14) .....                                    | 1204.4                                   |
| Planning:                                                                |                                          |
| Assistance standards.....                                                | 450                                      |
| Bicycle transportation.....                                              | 652                                      |
| Carpool/vanpool.....                                                     | 656                                      |
| Continuing, cooperative & comprehensive process.....                     | 450, Subpart A                           |
| Economic growth center development .....                                 | 490, Subpart A                           |
| Energy conservation .....                                                | 630, Subpart A                           |
| Federal-aid systems.....                                                 | 470, Subpart A                           |
| HP&R contracts.....                                                      | 172                                      |
| HP&R program approval & authorization.....                               | 420, Subpart A                           |
| Highway systems .....                                                    | 470                                      |
| Interstate highway system .....                                          | 476                                      |
| MPO.....                                                                 | 450                                      |
| Pedestrian safety.....                                                   | 652                                      |
| Priority primary routes.....                                             | 470, Subpart C                           |
| Property acquired by States for modified or terminated<br>projects ..... | 480                                      |
| Research and development.....                                            | 511                                      |
| Rural public transportation .....                                        | 820                                      |
| Safety fund apportionment.....                                           | 460                                      |
| Safety improvement program .....                                         | 924.9                                    |
| Safety in work zones.....                                                | 630, Subpart J                           |
| TIP .....                                                                | 450, Subpart B                           |
| Urban transportation .....                                               | 450, Subpart A                           |
| Plans:                                                                   |                                          |
| Areawide plan .....                                                      | 230.103                                  |
| Economic development.....                                                | 490, Subpart A                           |
| Highway safety plan (FHWA/NHTSA).....                                    | 1251                                     |
| Hometown or imposed.....                                                 | 230, Subpart A;<br>633, Subpart C        |
| Nominal value plan .....                                                 | 750.305                                  |

**Plans—Continued**

|                                                          |                                                                |
|----------------------------------------------------------|----------------------------------------------------------------|
| Specifications and estimates (PS&E) .....                | 630, Subpart B                                                 |
| State implementation .....                               | 770                                                            |
| Plants for landscaping .....                             | 752                                                            |
| <b>Preconstruction procedures:</b>                       |                                                                |
| Advance construction of Federal-aid projects .....       | 630, Subpart G                                                 |
| Bridges on Federal dams .....                            | 630, Subpart H                                                 |
| Certification acceptance .....                           | 640                                                            |
| Geodetic markers .....                                   | 630, Subpart D                                                 |
| Plans, specifications and estimates .....                | 630, Subpart B                                                 |
| Program and project procedures .....                     | 630, Subpart A                                                 |
| Project agreements .....                                 | 630, Subpart C                                                 |
| Traffic safety in work zones .....                       | 630, Subpart J                                                 |
| Priority primary routes—route selection & approval ..... | 470, Subpart C                                                 |
| Privacy Act, of 1974. <i>See</i> 49 CFR 10.              |                                                                |
| <b>Program(s):</b>                                       |                                                                |
| Airports, civil and military .....                       | 620, Subpart A                                                 |
| Appalachian highway .....                                | 633, Subpart B                                                 |
| Apprentice and trainee .....                             | 230, Subpart A;<br>260, Subparts A<br>and D; 633,<br>Subpart A |
| Approval & authorization .....                           | 420, Subpart A;<br>630, Subpart A                              |
| Beautification .....                                     | 750                                                            |
| Bikeway .....                                            | 652                                                            |
| Bridge replacement & rehabilitation .....                | 650, Subpart D                                                 |
| Carpool/vanpool .....                                    | 656                                                            |
| Certification acceptance .....                           | 640                                                            |
| Control of outdoor advertising .....                     | 750                                                            |
| Discretionary bridge .....                               | 650, Subpart G                                                 |
| Economic growth centers .....                            | 490, Subpart A                                                 |
| Emergency relief .....                                   | 668, Subparts A<br>& B                                         |
| Equal employment opportunity .....                       | 230                                                            |
| Forest highways .....                                    | 660, Subpart A                                                 |
| Great River Road .....                                   | 661                                                            |
| Hazard elimination .....                                 | 924                                                            |
| Innovative grants (NHTSA) .....                          | 1317                                                           |
| Management and coordination .....                        | 420                                                            |
| Minority business .....                                  | 230, Subpart B                                                 |
| National defense .....                                   | 660, Subpart E                                                 |
| Pavement marking .....                                   | 920                                                            |
| Public lands highways .....                              | 667                                                            |
| Rail-highway crossings .....                             | 924; 646, Subpart<br>B                                         |
| Research and development .....                           | 511                                                            |
| Rural public transportation .....                        | 820; 825                                                       |
| Safer off-system roads .....                             | 922                                                            |
| Safety improvement, highway .....                        | 924                                                            |
| State & community safety grant (FHWA/NHTSA) .....        | 1205                                                           |
| Traffic operations improvement .....                     | 655, Subpart A                                                 |
| Transportation Improvement Program (TIP) .....           | 450, Subpart B                                                 |
| Unified planning work program .....                      | 450, Subpart A                                                 |
| Urban transportation .....                               | 450, Subparts A<br>and B; 630,<br>Subpart A                    |

## Index to Chapters I and II

|                                                             |                            |
|-------------------------------------------------------------|----------------------------|
| Project approval:                                           |                            |
| Certification acceptance .....                              | 640                        |
| Project agreements .....                                    | 630, Subpart C             |
| Property management:                                        |                            |
| Excess lands (R-O-W) .....                                  | 710, Subpart C             |
| Modified or terminated projects .....                       | 480                        |
| Real property leasing, rental, etc. ....                    | 710, Subpart C             |
| Right-of-way .....                                          | 713, Subparts A, B, C      |
| Property, replacement of .....                              | 712, Subpart F             |
| Proprietary products .....                                  | 635, Subpart D;<br>650.609 |
| Protective buying .....                                     | 712.204(d)                 |
| Public hearings. <i>See</i> Hearings,                       |                            |
| Public involvement/participation. <i>See</i> Hearings.      |                            |
| Public lands highway funds .....                            | 667                        |
| Public road, definition .....                               | 470.103                    |
| Public road mileage for apportionment of safety funds ..... | 460                        |
| Public transportation:                                      |                            |
| Mass Transit .....                                          | 810                        |
| Nonurbanized areas .....                                    | 820; 825                   |
| R-O-W for rail and mass transit .....                       | 713; Subpart B             |

## Q

One.

## R

|                                                                   |                 |
|-------------------------------------------------------------------|-----------------|
| R-R work (non-Interstate) .....                                   | 625             |
| Railroad(s):                                                      |                 |
| Railroad-highway insurance protection .....                       | 646, Subpart A  |
| Railroad-highway projects .....                                   | 646, Subpart B  |
| Reimbursement for railroad-highway projects .....                 | 140, Subpart I  |
| Safety at grade crossings .....                                   | 924             |
| Ramps:                                                            |                 |
| Costs of curb-cut ramps on bikeways and walkways .....            | 652             |
| Design standards for Federal-aid highways .....                   | 625             |
| Relinquish access control .....                                   | 620, Subpart B  |
| Realignment of Federal-aid highway systems .....                  | 470, Subpart A  |
| Reconstruction. <i>See</i> Construction and maintenance           |                 |
| Recordkeeping and reporting requirements .....                    | 17              |
| Advance construction projects .....                               | 630.710         |
| Project agreement, OMB Control No. 2125-0529 .....                | 630.304         |
| Urban planning process (funding), OMB Control No. 2132-0031 ..... | 450.108         |
| Urban planning process (TIP), OMB Control No. 2132-0529 .....     | 450.110         |
| Record retention:                                                 |                 |
| Bridge structure data .....                                       | 650.311; 666.17 |
| Certification of size and weight enforcement .....                | 657             |
| Certification of speed limit enforcement .....                    | 659             |
| Consultants for engineering services .....                        | 172             |

## Record retention—Continued

|                                                                                                   |                                                |
|---------------------------------------------------------------------------------------------------|------------------------------------------------|
| Contractors and subcontractors with direct Federal-aid highway construction contracts .....       | 633, Subpart C, App. A; 633, Subpart B, App. B |
| Contractors and subcontractors holding State highway contracts other than competitively bid ..... | 172                                            |
| EEO construction contract compliance .....                                                        | 230.413                                        |
| Forest highway projects .....                                                                     | 660.117                                        |
| Negotiations for acquisition of real property .....                                               | 712.304                                        |
| Pavement marking demonstration program .....                                                      | 920                                            |
| Planning and research and development—contracts .....                                             | 172                                            |
| R&D internal reporting and review procedures and fiscal accounting by SHA .....                   | 511.10                                         |
| R&D Program inventory record of nonexpendable equipment by SHA .....                              | 140.922                                        |
| Sign ownership and compensable interest .....                                                     | 750.306                                        |
| State agencies administering relocation assistance programs .....                                 | 740.14                                         |
| State Hwy Agency administering metropolitan planning funds .....                                  | 450.306                                        |
| State Hwy Agency(s) or their agents .....                                                         | 17.5                                           |
| State Hwy Agency using airspace for nonhighway purposes .....                                     | 713.205                                        |
| State internal audit .....                                                                        | 12.9; 12.11; 12.19                             |
| Toll facilities .....                                                                             | 17.5                                           |
| Unbilled accrued costs on F-A programs .....                                                      | 11.302                                         |
| Vouchers:                                                                                         |                                                |
| "Progress" or "fiscal" .....                                                                      | 140.111                                        |
| Recreational and scenic highway .....                                                             | 661                                            |
| Regulations:                                                                                      |                                                |
| Application of .....                                                                              | 1.38                                           |
| Compliance with Federal laws .....                                                                | 1.36                                           |
| Reimbursement:                                                                                    |                                                |
| Administrative settlement costs—contract claims .....                                             | 140, Subpart E                                 |
| Bond issue project .....                                                                          | 140, Subpart F                                 |
| Construction engineering costs .....                                                              | 140, Subpart B                                 |
| Employment of public employees .....                                                              | 140, Subpart G                                 |
| Railroad work and railroad-highway projects .....                                                 | 140, Subpart I                                 |
| Right-of-way .....                                                                                | 710, Subpart C                                 |
| State highway agency audit expense—third party contract costs .....                               | 140, Subpart H                                 |
| State matching fund waiver .....                                                                  | 140, Subpart C                                 |
| Vouchers .....                                                                                    | 140, Subpart A                                 |
| Relinquishment of highway facilities .....                                                        | 620, Subpart B                                 |
| Relocation assistance .....                                                                       | 740                                            |
| Construction authorization, condition for .....                                                   | 635, Subpart C                                 |
| General .....                                                                                     | 740, Subpart A                                 |
| Mobile homes .....                                                                                | 740, Subpart E                                 |
| Modified or terminated highway projects .....                                                     | 480                                            |
| Moving payments .....                                                                             | 740, Subpart C                                 |
| Relocation services .....                                                                         | 740, Subpart B                                 |
| Replacement housing as last resort .....                                                          | 740, Subpart F                                 |
| Replacement housing payments .....                                                                | 740, Subpart D                                 |

|                                                                 |                      |
|-----------------------------------------------------------------|----------------------|
| reporting requirements. See Recordkeeping                       |                      |
| Research and Development:                                       |                      |
| Federal-aid funds without State matching.....                   | 511.9                |
| Management option.....                                          | 511.10               |
| Program management.....                                         | 511.4                |
| Property management.....                                        | 511.7                |
| Studies, reports on.....                                        | 511.8                |
| Study proposal and changes.....                                 | 511.6                |
| Work program and changes.....                                   | 511.5                |
| Rest areas:                                                     |                      |
| Design of facilities.....                                       | 625                  |
| Great River Road.....                                           | 661                  |
| Roadside facility.....                                          | 752                  |
| Water and sewage treatment at safety rest areas.....            | 650, Subpart E       |
| Resurfacing, restoration, & rehabilitation (non-Interstate).... | 625                  |
| Revenue, diversion of.....                                      | 1.28                 |
| Resharing.....                                                  | 656                  |
| Right-of-way:                                                   |                      |
| Acquisition function:                                           |                      |
| Administration settlements, legal settlements and               |                      |
| court awards.....                                               | 712, Subpart D       |
| Federal land transfers and direct Federal acquisition.....      | 712, Subpart E       |
| Functional replacement of real property.....                    | 712, Subpart F       |
| General provisions and project procedures.....                  | 712, Subpart B       |
| Land services facilities.....                                   | 712, Subpart H       |
| Negotiations.....                                               | 712, Subpart C       |
| Policy.....                                                     | 712, Subpart A       |
| Revolving fund.....                                             | 712, Subpart G       |
| Airspace within R-O-W boundaries.....                           | 1.23; 713, Subpart B |
| Appraisal function.....                                         | 720, Subpart B       |
| Civil rights.....                                               | 710, Subpart D       |
| General policy and definitions.....                             | 710, Subpart A       |
| Encroachments.....                                              | 1.23(b)              |
| Interest to be acquired.....                                    | 1.23(a)              |
| Mass transit.....                                               | 480; 810             |
| Property management function:                                   |                      |
| Disposal of R-O-W.....                                          | 713, Subpart C; 480  |
| Management of airspace.....                                     | 713, Subpart B       |
| Real property acquisition.....                                  | 713, Subpart A       |
| Reimbursement provisions.....                                   | 710, Subpart C       |
| Relinquishment of highway facilities.....                       | 620, Subpart B       |
| State highway department responsibilities.....                  | 710, Subpart B       |
| Use for highway purposes.....                                   | 1.23(b)              |
| Use for nonhighway purposes.....                                | 1.23(c); 480; 810    |
| Roadside obstacles, Standard 12.....                            | 1204.4               |
| Route designations (commercial vehicles).....                   | 658                  |
| Rules of procedure for invoking sanctions under the High-       |                      |
| way Safety Act of 1966.....                                     | 1206                 |
| Rural area.....                                                 | 470.103; 820.3       |
| Rural transportation.....                                       | 820; 825             |

## S

|                                    |     |
|------------------------------------|-----|
| Safe off-system roads program..... | 922 |
|------------------------------------|-----|



**Safety:**

|                                                                                                     |                        |
|-----------------------------------------------------------------------------------------------------|------------------------|
| Applicability to federally administered areas .....                                                 | Chapter II             |
| Construction & operational improvements (FHWA/<br>NHTSA) .....                                      | 1205                   |
| Highway safety improvement program .....                                                            | 924                    |
| Innovative project grants (NHTSA) .....                                                             | 1317                   |
| Off-system roads .....                                                                              | 922                    |
| Pavement marking .....                                                                              | 920                    |
| Public road mileage for apportionment of safety funds ....                                          | 460                    |
| Special bridge replacement and rehabilitation .....                                                 | 650, Subpart D         |
| State & community grant (FHWA/NHTSA) .....                                                          | 1205                   |
| State Highway Safety Agency (FHWA/NHTSA) .....                                                      | 1251                   |
| State matching of planning & administration costs<br>(FHWA/NHTSA) .....                             | 1252                   |
| Traffic control devices .....                                                                       | 655, Subpart F         |
| Traffic control plan in work zones .....                                                            | 630, Subpart J         |
| Transfer of highway safety funds .....                                                              | 160, Subpart C         |
| Salary (SHA), reimbursement I20140, Subpart G .....                                                 | 637, Subpart B         |
| Sampling and testing of materials and construction .....                                            | 1206                   |
| Sanctions, highway safety .....                                                                     | 661                    |
| Scenic and recreational highway .....                                                               | 752                    |
| Scenic enhancement .....                                                                            | 260, Subpart A         |
| Scholarship grants (NHI) .....                                                                      | Chapter II             |
| Seat belt use laws .....                                                                            | 1.34; 642; 640         |
| Secondary road plan .....                                                                           | 650.513                |
| Sewage treatment facilities .....                                                                   |                        |
| <b>Sign(s):</b>                                                                                     |                        |
| Bonus program .....                                                                                 | 190; 750, Subpart<br>A |
| Construction zone signs .....                                                                       | 655, Subpart F         |
| Directional sign on R-O-W .....                                                                     | 655, Subpart C         |
| Highway beautification .....                                                                        | 750                    |
| National standards for specific information .....                                                   | 655, Subpart C         |
| Outdoor advertising .....                                                                           | 750                    |
| Railroad grade crossing .....                                                                       | 924                    |
| Relocation assistance, advertising signs .....                                                      | 740                    |
| Speed limit .....                                                                                   | 659                    |
| Traffic control devices .....                                                                       | 625; 655, Subpart<br>F |
| Size and weight .....                                                                               | 657; 658               |
| Skid resistance (standard 12) .....                                                                 | 1204.4; 924            |
| Small business participation .....                                                                  | 635, Subpart A         |
| Special bridge replacement and rehabilitation .....                                                 | 650, Subpart D         |
| Speed limit .....                                                                                   | 659                    |
| <b>Standards:</b>                                                                                   |                        |
| See Design standards for Federal-aid highways .....                                                 | 625                    |
| Highway safety program standards for federally ad-<br>ministered areas .....                        | 1230                   |
| National bridge inspection .....                                                                    | 650, Subpart C         |
| National standard for directional and official signs ....                                           | 750, Subpart B         |
| National standard for regulation by States of out-<br>door advertising adjacent to interstate ..... | 750, Subpart A         |
| National standard for signs giving specific informa-<br>tion in interest of traveling public .....  | 655, Subpart C         |
| Noise standards and procedures .....                                                                | 772                    |
| Off-system roads program .....                                                                      | 922.13                 |

|                                                                                           |                                   |
|-------------------------------------------------------------------------------------------|-----------------------------------|
| Standards—Continued                                                                       |                                   |
| Pavement marking .....                                                                    | 920.7                             |
| Planning assistance and standards:                                                        |                                   |
| Metropolitan planning funds .....                                                         | 450, Subpart C                    |
| Transportation improvement program .....                                                  | 450, Subpart B                    |
| Urban transportation planning .....                                                       | 450, Subpart A                    |
| Procurement of services, supplies, or equipment .....                                     | 172                               |
| Uniform standard for State highway safety program ..                                      | 1204.4                            |
| State audit expense—contract costs .....                                                  | 140, Subpart H                    |
| State contract administration for other than competitively<br>bid contracts .....         | 172                               |
| State fiscal procedures and reports:                                                      |                                   |
| Transfer of Federal-aid highway funds—FY 1976 and<br>prior year apportionments. ....      | 160, Subpart A                    |
| Transfer of Federal-aid highway funds—FY 1977 and<br>subsequent year apportionments. .... | 160, Subpart B                    |
| Transfer of highway safety funds .....                                                    | 160, Subpart C                    |
| State Highway Agency EEO programs .....                                                   | 230, Subpart C                    |
| State internal audit responsibility .....                                                 | 12                                |
| Subcontracting:                                                                           |                                   |
| Federal-aid contracts .....                                                               | 635.113                           |
| Negotiated contracts .....                                                                | 172                               |
| Substitution of public mass transit projects .....                                        | 476, Subpart D                    |
| Supportive services .....                                                                 | 230, Subpart A                    |
| Systems:                                                                                  |                                   |
| Appalachian .....                                                                         | 633, Subpart B                    |
| Defense highways .....                                                                    | 470, Subpart A;<br>660, Subpart E |
| Economic growth center .....                                                              | 490, Subpart A                    |
| Federal-aid primary, secondary, and urban. ....                                           | 470, Subpart A                    |
| Priority primary routes .....                                                             | 470, Subpart C                    |
| Urban area boundaries .....                                                               | 1.7                               |
| Interstate system .....                                                                   | 476                               |
| Safer off-system roads program .....                                                      | 922                               |
| Secondary .....                                                                           | 1.34; 642                         |
| <b>T</b>                                                                                  |                                   |
| TOPICS .....                                                                              | 655, Subpart A                    |
| Title VI program and related statutes—implementation and<br>review procedures .....       | 200                               |
| Toll facilities records .....                                                             | 17.5                              |
| Tolls, bridge. <i>See</i> 49 CFR 310.                                                     |                                   |
| Traffic control devices:                                                                  |                                   |
| Federal-aid & other streets .....                                                         | 655, Subpart F                    |
| Manual .....                                                                              | 625                               |
| Railroad-highway grade crossing .....                                                     | 646, Subpart B                    |
| Traffic control plan in work zone .....                                                   | 630, Subpart J                    |
| Traffic noise, abatement of .....                                                         | 772                               |
| Traffic operations:                                                                       |                                   |
| Highway safety improvement program .....                                                  | 924                               |
| Improvement programs (TOPICS) .....                                                       | 655, Subpart A                    |
| Motorist aid system .....                                                                 | 655, Subpart G                    |
| National standards for specific information signs .....                                   | 655, Subpart C                    |
| Pavement marking demonstration program .....                                              | 920                               |
| Traffic control devices on Federal-aid and other streets...                               | 655, Subpart F                    |
| Traffic surveillance and control .....                                                    | 655, Subpart D                    |
| Trail markers on Federal-aid highways .....                                               | 655.607                           |

|                                                                                        |                        |
|----------------------------------------------------------------------------------------|------------------------|
| Training .....                                                                         | 260                    |
| Apprentices and trainees .....                                                         | 633, Subpart A, App. A |
| Highway safety .....                                                                   | 260, Subpart A         |
| Highway technology .....                                                               | 260, Subpart A         |
| Highway transportation research and education .....                                    | 260, Subpart A         |
| Special provision .....                                                                | 230, Subpart A, App. B |
| State education and training program .....                                             | 260, Subpart D         |
| Transfer of Federal-aid highway funds—FY 1976 and prior year apportionments .....      | 160, Subpart A         |
| Transfer of Federal-aid highway funds—FY 1977 and subsequent year apportionments ..... | 160, Subpart B         |
| Transfer of highway safety funds .....                                                 | 160, Subpart C         |
| Transfer of R-O-W .....                                                                | 620, Subpart B         |
| Transportation:                                                                        |                        |
| Improvement program .....                                                              | 450, Subpart B         |
| Rural highway transportation demonstration program ....                                | 820                    |
| Systems management (TSM) element .....                                                 | 450, Subpart A         |
| Urban planning .....                                                                   | 450, Subpart A         |
| Nonurbanized areas .....                                                               | 825                    |
| Transporter-erector route .....                                                        | 660, Subpart E         |
| Truck lanes .....                                                                      | 810.2                  |
| Truck size and weight .....                                                            | 657; 658               |

## U

|                                                                                |                    |
|--------------------------------------------------------------------------------|--------------------|
| Unbilled accrued costs on Federal-State program .....                          | 11, Subpart C      |
| Uneconomic remnant .....                                                       | 710, Subparts A, C |
| Unified planning work program .....                                            | 450, Subpart A     |
| Uniform Relocation Assistance and Real Property Acquisition Policies Act. .... | 740; 710.204       |
| Uniform standards for State highway safety program .....                       | 1204               |
| Urban area .....                                                               | 470.103            |
| Urban area boundaries .....                                                    | 1.7                |
| Urban arterial routes .....                                                    | 470.103            |
| Urban collector routes .....                                                   | 470.103            |
| Urban Mass Transportation Administration (UMTA):                               |                    |
| Mass transit and special use highway projects .....                            | 810                |
| Nonhighway interstate substitution projects .....                              | 476, Subpart D     |
| Nonhighway public mass transit projects .....                                  | 810, Subpart D     |
| Transportation improvement program (TIP) .....                                 | 450, Subpart B     |
| Urban transportation planning (UTP) .....                                      | 450, Subpart A     |
| Urban system realignment .....                                                 | 450, Subpart A     |
| Urban transportation planning .....                                            | 450, Subpart A     |
| Urban revitalization .....                                                     | 480                |
| Utilities:                                                                     |                    |
| Accommodations of utilities .....                                              | 645, Subpart B     |
| Real property reimbursement .....                                              | 710, Subpart C     |
| Relocation and adjustments .....                                               | 645, Subpart A     |

## V

|                 |     |
|-----------------|-----|
| Vanpools .....  | 656 |
| Vehicle(s):     |     |
| Abandoned ..... | 752 |

## **Index to Chapters I and II**

|                                                                                        |                                                                       |
|----------------------------------------------------------------------------------------|-----------------------------------------------------------------------|
| <b>Vehicle(s)—Continued</b>                                                            |                                                                       |
| <b>Motor carrier. See 49 CFR Chap. III</b>                                             |                                                                       |
| <b>Route designations (commercial).....</b>                                            | <b>658</b>                                                            |
| <b>Size and weight.....</b>                                                            | <b>657</b>                                                            |
| <b>Sending machines.....</b>                                                           | <b>752</b>                                                            |
| <b>Voucher(s):</b>                                                                     |                                                                       |
| <b>Bonus project.....</b>                                                              | <b>190</b>                                                            |
| <b>Final project voucher .....</b>                                                     | <b>17.5</b>                                                           |
| <b>Progress and final .....</b>                                                        | <b>140, Subparts A, F; 190; 630, Subpart G</b>                        |
| <b>Project payment.....</b>                                                            | <b>1.31</b>                                                           |
| <b>W</b>                                                                               |                                                                       |
| <b>Wages.....</b>                                                                      | <b>633, Subpart A, App. A; 633, Subpart B, App. B; 140, Subpart G</b> |
| <b>Walkways and bikeways in conjunction with Federal and Federal-aid highways.....</b> | <b>652</b>                                                            |
| <b>Warranty and guaranty clauses .....</b>                                             | <b>635.413</b>                                                        |
| <b>Water Pollution Control Act:</b>                                                    |                                                                       |
| <b>See Federal-aid construction contracts (other than Appalachian).....</b>            | <b>633, Subpart A</b>                                                 |
| <b>Water supply and sewage treatment at safety rest areas.....</b>                     | <b>650, Subpart E</b>                                                 |
| <b>Weight and size .....</b>                                                           | <b>657; 658</b>                                                       |
| <b>Wetlands and coastal zones impacts.....</b>                                         | <b>771; 777</b>                                                       |
| <b>Withdrawal of interstate segments .....</b>                                         | <b>476, Subpart D; 480</b>                                            |
| <b>Work zone, safety in traffic .....</b>                                              | <b>630, Subpart J</b>                                                 |

## **X**

None.

## **Y**

None.

## **Z**

None.



# FINDING AIDS

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st of **CFR** titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the **CFR** are included in the **CFR Index and Finding Aids** volume to the Code of Federal Regulations which is published separately and revised annually.

**Material Approved for Incorporation by Reference**  
**Table of CFR Titles and Chapters**  
**Alphabetical List of Agencies Appearing in the CFR**  
**Table of CFR Sections Affected**



## Material Approved for Incorporation by Reference

Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 Part 51 the incorporation by reference of the following publications. For information on incorporation by reference, see the preliminary pages of volume.

### CHAPTER I (PARTS 620 TO 668)

#### FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

##### 23 CFR

#### American Association of State Highway and Transportation Officials

400 Capitol St., NW, Suite 225, Washington, DC 20001

Manual of Practice for Traffic Design Guide for Local Roads and Streets, 1970. .... 625.3 (a)

Manual of Practice for Traffic Design Standards for Highways Other Than Freeways, 625.3 (a)

Manual of Practice for Traffic Design Standards for the National System of Interstate and 625.3 (a)  
Use Highways, 1967..

Manual of Practice for Protective Screening of Overpass Structures, 1969..... 625.3 (b)

Manual of Practice for Safety Rest Areas for the National System of Interstate and 625.3(e)  
Use Highways, 1968.

Manual of Practice for Selecting, Locating, and Designing Traffic Barriers, 1977 ..... 625.3 (a)

Manual of Practice for Guidelines for Skid Resistant Pavement Design, 1976. .... 625.3 (a)

Manual of Practice for Glossary Definitions, 1968..... 625.3(e)

Manual of Practice for Glossary Design and Operational Practices Related to Highway 625.3 (a)

Report on the Special AASHTO Traffic Safety Committee,

Manual of Practice for National Guide for Roadway Lighting, 1976..... 625.3 (a)

Manual of Practice for National Guide for Design of Pavement Structures, 1972..... 625.3 (a)

Manual of Practice for Access Between Adjacent Railroads and Interstate High- 625.3 (a)  
ways, 1960..

Manual of Practice for Design of Urban Highways and Arterial Streets, 1973..... 625.3 (a)

Manual of Practice for Design Standards for Stopping Sight Distance, 1971. .... 625.3 (a)

Manual of Practice for Design of Geometric Design of Rural Highways, 1965..... 625.3 (a)

Manual of Practice for Design on the Accommodation of Utilities on Freeway Rights-of-Way, 625.3 (a)

Manual of Practice for Design on U-Turn Median Openings on Freeways, 1960. .... 625.3 (a)

Manual of Practice for Design and Specifications for Highway Bridges, Twelfth Ed., 1977, and 625.3 (b)  
Minimum Specifications, Bridges, 1978..

Manual of Practice for Design and Specifications for Movable Highway Bridges, 1970..... 625.3 (b)

Manual of Practice for Design and Specifications for Structural Supports for Highway Signs, 625.3 (b)  
Signposts, and Traffic Signals, 1975..

Manual of Practice for Design and Specifications for Transportation Materials and Methods of 625.3(d)

Sampling and Testing, 1978, Part I and Part II.

Manual of Practice for Design and Specifications for Welding of Structural Steel Highway 625.3 (b)

Welding Specifications, Second Ed., 1977..

#### American Welding Society

5901 NW 7th St., Miami, FL 33125

Manual of Practice for Design and Specifications for Welding of Reinforcing Steel Welding..... 625.3(b)



## **Title 23—Highways**

### **23 CFR CHAPTER I (PARTS 620 TO 668)—Continued FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION— Continued**

#### **23 CFR**

#### **Federal Highway Administration**

Washington, DC 20590

|                                                                                                            |          |
|------------------------------------------------------------------------------------------------------------|----------|
| Manual on Uniform Traffic Control Devices for Streets and Highways<br>FHWA, 1978, as amended January 1985. | 625.3(c) |
| Policy on Interstate System Projects, FHPM 6-3-2-4, 1967 .....                                             | 625.3(a) |
| Skid Accident Reduction Program, FHWA, FHPM 6-2-4-3, 1973 .....                                            | 625.3(a) |
| Standard Alphabets for Highway Signs, FHWA, 1966, Reprinted May<br>1972.                                   | 625.3(c) |

### **23 CFR CHAPTER II (PARTS 1200 TO 1200) NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION**

#### **23 CFR**

#### **Federal Highway Administration**

400 Seventh St., SW, Washington, DC 20590

|                                |        |
|--------------------------------|--------|
| Standard Alphabets, 1968 ..... | 1204.4 |
|--------------------------------|--------|

#### **General Services Administration**

18th and F Streets, NW, Washington DC 20405

|                                              |        |
|----------------------------------------------|--------|
| Federal Standard No. 595a, Color 13432 ..... | 1204.4 |
| Federal Standard No. 595a, Color 37038 ..... | 1204.4 |

## **Table of CFR Titles and Chapters**

(As of March 15, 1985)

### **Title 1—General Provisions**

**Chap.**

- I Administrative Committee of the Federal Register (Parts 1-49)**
- II Office of the Federal Register (Parts 50-299)**
- III Administrative Conference of the United States (Parts 300-399)**
- IV Miscellaneous Agencies (Parts 400-499)**

### **Title 2—[Reserved]**

### **Title 3—The President**

**Proclamations**

**Executive Orders**

**Other Presidential Documents**

- I Executive Office of the President (Parts 100-199)**

### **Title 4—Accounts**

- I General Accounting Office (Parts 1-99)**
- II Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100-299)**
- III General Accounting Office (CASB) (Parts 300-499)**

### **Title 5—Administrative Personnel**

- I Office of Personnel Management (Parts 1-1199)**
- II Merit Systems Protection Board (Parts 1200-1299)**
- III Office of Management and Budget (Parts 1300-1399)**
- IV Advisory Committee on Federal Pay (Parts 1400-1499)**
- V The International Organizations Employees Loyalty Board (Parts 1500-1599)**
- VII Advisory Commission on Intergovernmental Relations (Parts 1700-1799)**
- IX Appalachian Regional Commission (Parts 1900-1999)**
- XI United States Soldiers' and Airmen's Home (Parts 2100-2199)**
- XIV Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400-2499)**

Chap.

## **Title 5—Administrative Personnel—Continued**

- XV** Office of Administration, Executive Office of the President  
(Parts 2500-2599)

## **Title 6—[Reserved]**

## **Title 7—Agriculture**

**SUBTITLE A—Office of the Secretary of Agriculture (Parts 0-25a)**

**SUBTITLE B—Regulations of the Department of Agriculture**

- I** Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 26-209)
- II** Food and Nutrition Service, Department of Agriculture (Parts 210-299)
- III** Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300-399)
- IV** Federal Crop Insurance Corporation, Department of Agriculture (Parts 400-499)
- V** Agricultural Research Service, Department of Agriculture (Parts 500-599)
- VI** Soil Conservation Service, Department of Agriculture (Parts 600-699)
- VII** Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700-799)
- VIII** Federal Grain Inspection Service, Department of Agriculture (Parts 800-899)
- IX** Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900-999)
- X** Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000-1199)
- XI** Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200-1299)
- XIV** Commodity Credit Corporation, Department of Agriculture (Parts 1400-1499)
- XV** Foreign Agricultural Service, Department of Agriculture (Parts 1500-1599)
- XVI** Rural Telephone Bank, Department of Agriculture (Parts 1600-1699)
- XVII** Rural Electrification Administration, Department of Agriculture (Parts 1700-1799)
- XVIII** Farmers Home Administration, Department of Agriculture (Parts 1800-2099)
- XXI** Foreign Economic Development Service, Department of Agriculture (Parts 2100-2199)
- XXII** Office of International Cooperation and Development, Department of Agriculture (Parts 2200-2299)
- XXIV** Board of Contract Appeals, Department of Agriculture (Parts 2400-2499)

## **Title 7—Agriculture—Continued**

Chap.

- XXV** Office of the General Sales Manager, Department of Agriculture (Parts 2500-2599)
- XXVI** Office of Inspector General, Department of Agriculture (Parts 2600-2699)
- XXVII** Office of Information Resources Management, Department of Agriculture (Parts 2700-2799)
- XXIX** Office of Energy, Department of Agriculture (Parts 2900-2999)
- XXX** Office of Operations and Finance, Department of Agriculture (Parts 3000-3099)
- XXXI** Office of Environmental Quality, Department of Agriculture (Parts 3100-3199)
- XXXII** Office of Grants and Program Systems, Department of Agriculture
- XXXIV** Cooperative State Research Service, Department of Agriculture

## **Title 8—Aliens and Nationality**

- I** Immigration and Naturalization Service, Department of Justice (Parts 1-499)

## **Title 9—Animals and Animal Products**

- I** Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1-199)
- II** Packers and Stockyards Administration, Department of Agriculture (Parts 200-299)
- III** Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300-399)

## **Title 10—Energy**

- I** Nuclear Regulatory Commission (Parts 0-199)
- II** Department of Energy (Parts 200-699)
- III** Department of Energy (Parts 700-999)
- X** Department of Energy (General Provisions) (Parts 1000-1099)
- XV** Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500-1599)

## **Title 11—Federal Elections**

- I** Federal Election Commission (Parts 1-9099)

## **Title 12—Banks and Banking**

- I** Comptroller of the Currency, Department of the Treasury (Parts 1-199)
- II** Federal Reserve System (Parts 200-299)
- III** Federal Deposit Insurance Corporation (Parts 300-399)
- IV** Export-Import Bank of the United States (Parts 400-499)
- V** Federal Home Loan Bank Board (Parts 500-599)

## **Title 12—Banks and Banking—Continued**

Chap.

- VI Farm Credit Administration (Parts 600-699)**
- VII National Credit Union Administration (Parts 700-799)**
- VIII Federal Financing Bank (Parts 800-899)**
- XI Federal Financial Institutions Examination Council (Parts 1100-1199)**
- XII Depository Institutions Deregulation Committee (Parts 1200-1299)**

## **Title 13—Business Credit and Assistance**

- I Small Business Administration (Parts 1-199)**
- III Economic Development Administration, Department of Commerce (Parts 300-399)**
- V Regional Action Planning Commissions (Parts 500-599)**

## **Title 14—Aeronautics and Space**

- I Federal Aviation Administration, Department of Transportation (Parts 1-199)**
- II Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200-399)**
- V National Aeronautics and Space Administration (Parts 1200-1299)**

## **Title 15—Commerce and Foreign Trade**

**SUBTITLE A—Office of the Secretary of Commerce (Parts 0-19)**

**SUBTITLE B—Regulations Relating to Commerce and Foreign Trade**

- I Bureau of the Census, Department of Commerce (Parts 20-199)**
- II National Bureau of Standards, Department of Commerce (Parts 200-299)**
- III International Trade Administration, Department of Commerce (Parts 300-399)**
- IV Foreign-Trade Zones Board (Parts 400-499)**
- VI Bureau of Industrial Economics, Department of Commerce (Parts 600-699)**
- VIII Bureau of Economic Analysis, Department of Commerce (Parts 800-899)**
- IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900-999)**
- XII United States Travel Service, Department of Commerce (Parts 1200-1299)**
- XIII East-West Foreign Trade Board (Parts 1300-1399)**
- XIV Minority Business Development Agency (Parts 1400-1499)**
- SUBTITLE C—Regulations Relating to Foreign Trade Agreements**
- XX Office of the United States Trade Representative (Parts 2000-2099)**

## **Title 15—Commerce and Foreign Trade—Continued**

Chap.

### **SUBTITLE D—Regulations Relating to Telecommunications and Information**

- XXIII National Telecommunications and Information Administration,  
Department of Commerce (Parts 2300-2399)**

## **Title 16—Commercial Practices**

- I Federal Trade Commission (Parts 0-999)**  
**II Consumer Product Safety Commission (Parts 1000-1799)**

## **Title 17—Commodity and Securities Exchanges**

- I Commodity Futures Trading Commission (Parts 1-199)**  
**II Securities and Exchange Commission (Parts 200-399)**

## **Title 18—Conservation of Power and Water Resources**

- I Federal Energy Regulatory Commission, Department of Energy  
(Parts 1-399)**  
**III Delaware River Basin Commission (Parts 400-499)**  
**IV Office of Water Resources Research, Department of the Interior  
(Parts 500-599)**  
**VI Water Resources Council (Parts 700-799)**  
**VIII Susquehanna River Basin Commission (Parts 800-899)**  
**XIII Tennessee Valley Authority (Parts 1300-1399)**

## **Title 19—Customs Duties**

- I United States Customs Service, Department of the Treasury  
(Parts 1-199)**  
**II United States International Trade Commission (Parts 200-299)**  
**III International Trade Administration, Department of Commerce  
(Parts 300-399)**

## **Title 20—Employees' Benefits**

- I Office of Workers' Compensation Programs, Department of Labor  
(Parts 1-199)**  
**II Railroad Retirement Board (Parts 200-399)**  
**III Social Security Administration, Department of Health and  
Human Services (Parts 400-499)**  
**IV Employees' Compensation Appeals Board, Department of Labor  
(Parts 500-599)**  
**V Employment and Training Administration, Department of Labor  
(Parts 600-699)**  
**VI Employment Standards Administration, Department of Labor  
(Parts 700-799)**  
**VII Benefits Review Board, Department of Labor (Parts 800-899)**  
**VIII Joint Board for the Enrollment of Actuaries (Parts 900-999)**

## **Title 21—Food and Drugs**

Chap.

- I Food and Drug Administration, Department of Health and Human Services (Parts 1-1299)**
- II Drug Enforcement Administration, Department of Justice (Parts 1300-1399)**

## **Title 22—Foreign Relations**

- I Department of State (Parts 1-199)**
- II Agency for International Development, International Development Cooperation Agency (Parts 200-299)**
- III Peace Corps (Parts 300-399)**
- IV International Joint Commission, United States and Canada (Parts 400-499)**
- V United States Information Agency (Parts 500-599)**
- VI United States Arms Control and Disarmament Agency (Parts 600-699)**
- VII Overseas Private Investment Corporation (Parts 700-799)**
- IX Foreign Service Grievance Board Regulations (Parts 900-999)**
- X Inter-American Foundation (Parts 1000-1099)**
- XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100-1199)**
- XII United States International Development Cooperation Agency (Parts 1200-1299)**
- XIII Board for International Broadcasting (Parts 1300-1399)**
- XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400-1499)**
- XV African Development Foundation (Parts 1500-1599)**

## **Title 23—Highways**

- I Federal Highway Administration, Department of Transportation (Parts 1-999)**
- II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200-1299)**
- III National Highway Traffic Safety Administration, Department of Transportation (Parts 1300-1399)**

## **Title 24—Housing and Urban Development**

**SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0-99)**

**SUBTITLE B—Regulations Relating to Housing and Urban Development**

- I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100-199)**
- II Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200-299)**

## **Title 24—Housing and Urban Development—Continued**

Chap.

- III** Government National Mortgage Association, Department of Housing and Urban Development (Parts 300-399)
- V** Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500-599)
- VI** Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600-699)
- VII** Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700-799)
- VIII** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800-899)
- IX** Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900-999)
- X** Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700-1799)
- XI** Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development (Parts 1800-1899)
- XII** Office of Inspector General, Department of Housing and Urban Development (Parts 1200-1299)
- XV** Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development (Parts 2700-2799)
- XX** Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200-3699)
- XXV** Neighborhood Reinvestment Corporation (Parts 4100-4199)

## **Title 25—Indians**

- I** Bureau of Indian Affairs, Department of the Interior (Parts 1-299)
- II** Indian Arts and Crafts Board, Department of the Interior (Parts 300-399)
- IV** Navajo and Hopi Indian Relocation Commission (Parts 700-799)

## **Title 26—Internal Revenue**

- I** Internal Revenue Service, Department of the Treasury (Parts 1-699)

## **Title 27—Alcohol, Tobacco Products and Firearms**

- I** Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1-299)



## **Title 28—Judicial Administration**

Chap.

- I Department of Justice (Parts 0-199)**
- III Federal Prison Industries, Department of Justice (Parts 300-399)**
- V Bureau of Prisons, Department of Justice (Parts 500-599)**

## **Title 29—Labor**

**SUBTITLE A—Office of the Secretary of Labor (Parts 0-99)**

**SUBTITLE B—Regulations Relating to Labor**

- I National Labor Relations Board (Parts 100-199)**
- II Office of the Assistant Secretary for Labor-Management Relations, Department of Labor (Parts 200-299)**
- III National Railroad Adjustment Board (Parts 300-399)**
- IV Office of Labor-Management Standards Enforcement, Department of Labor (Parts 400-499)**
- V Wage and Hour Division, Department of Labor (Parts 500-899)**
- IX Construction Industry Collective Bargaining Commission (Parts 900-999)**
- X National Mediation Board (Parts 1200-1299)**
- XII Federal Mediation and Conciliation Service (Parts 1400-1499)**
- XIV Equal Employment Opportunity Commission (Parts 1600-1699)**
- XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900-1999)**
- XX Occupational Safety and Health Review Commission (Parts 2200-2499)**
- XXV Pension and Welfare Benefit Programs, Department of Labor (Parts 2500-2599)**
- XXVI Pension Benefit Guaranty Corporation (Parts 2600-2699)**
- XXVII Federal Mine Safety and Health Review Commission (Parts 2700-2799)**

## **Title 30—Mineral Resources**

- I Mine Safety and Health Administration, Department of Labor (Parts 1-199)**
- II Minerals Management Service, Department of the Interior (Parts 200-299)**
- III Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300-399)**
- IV Geological Survey, Department of the Interior (Parts 400-499)**
- VI Bureau of Mines, Department of the Interior (Parts 600-699)**
- VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700-999)**

## **Title 31—Money and Finance: Treasury**

**SUBTITLE A—Office of the Secretary of the Treasury (Parts 0-50)**

**SUBTITLE B—Regulations Relating to Money and Finance**

## **Title 31—Money and Finance: Treasury—Continued**

Chap.

- I Monetary Offices, Department of the Treasury (Parts 51-199)
- II Fiscal Service, Department of the Treasury (Parts 200-399)
- IV Secret Service, Department of the Treasury (Parts 400-499)
- V Office of Foreign Assets Control, Department of the Treasury (Parts 500-599)
- VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600-699)
- VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700-799)

## **Title 32—National Defense**

### **SUBTITLE A—Department of Defense**

- I Office of the Secretary of Defense (Parts 1-399)
- V Department of the Army (Parts 400-699)
- VI Department of the Navy (Parts 700-799)
- VII Department of the Air Force (Parts 800-1099)

### **SUBTITLE B—Other Regulations Relating to National Defense**

- XII Defense Logistics Agency (Parts 1200-1299)
- XVI Selective Service System (Parts 1600-1699)
- ~~XIX~~ Central Intelligence Agency (Parts 1900-1999)
- XX Information Security Oversight Office (Parts 2900-2099)
- XXI National Security Council (Parts 2100-2199)
- XXIV Office of Science and Technology Policy (Parts 2400-2499)
- XXVII Office for Micronesia Status Negotiations (Parts 2700-2799)
- XXVIII Office of the Vice President of the United States (Parts 2800-2899)

## **Title 33—Navigation and Navigable Waters**

- I Coast Guard, Department of Transportation (Parts 1-199)
- II Corps of Engineers, Department of the Army (Parts 200-399)
- IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400-499)

## **Title 34—Education**

### **SUBTITLE A—Office of the Secretary, Department of Education (Parts 1-99)**

### **SUBTITLE B—Regulations of the Offices of the Department of Education**

- I Office for Civil Rights, Department of Education (Parts 100-199)
- II Office of Elementary and Secondary Education, Department of Education (Parts 200-299)
- III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300-399)
- IV Office of Vocational and Adult Education, Department of Education (Parts 400-499)

## **Title 34—Education—Continued**

Chap.

- V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500-599)
- VI Office of Postsecondary Education, Department of Education (Parts 600-699)
- VII Office of Educational Research and Improvement, Department of Education (Parts 700-799)

## **Title 35—Panama Canal**

- I Panama Canal Regulations (Parts 1-299)

## **Title 36—Parks, Forests, and Public Property**

- I National Park Service, Department of the Interior (Parts 1-199)
- II Forest Service, Department of Agriculture (Parts 200-299)
- III Corps of Engineers, Department of the Army (Parts 300-399)
- IV American Battle Monuments Commission (Parts 400-499)
- V Smithsonian Institution (Parts 500-599)
- VII Library of Congress (Parts 700-799)
- VIII Advisory Council on Historic Preservation (Parts 800-899)
- IX Pennsylvania Avenue Development Corporation (Parts 900-999)
- X Commission of Fine Arts (Parts 1000-1099)
- XI Architectural and Transportation Barriers Compliance Board (Parts 1100-1199)

## **Title 37—Patents, Trademarks, and Copyrights**

- I Patent and Trademark Office, Department of Commerce (Parts 1-199)
- II Copyright Office, Library of Congress (Parts 200-299)
- III Copyright Royalty Tribunal (Parts 300-399)
- IV Assistant Secretary for Productivity, Technology and Innovation, U.S. Department of Commerce

## **Title 38—Pensions, Bonuses, and Veterans' Relief**

- I Veterans Administration (Parts 0-99)

## **Title 39—Postal Service**

- I United States Postal Service (Parts 1-999)
- III Postal Rate Commission (Parts 3000-3099)

## **Title 40—Protection of Environment**

- I Environmental Protection Agency (Parts 1-799)
- V Council on Environmental Quality (Parts 1500-1599)

## **Title 41—Public Contracts and Property Management**

Chap.

### **SUBTITLE A—Federal Procurement Regulations System**

- 1 Federal Procurement Regulations (Parts 1-1—1-99)**
- 3 Department of Health and Human Services (Parts 3-1—3-99)**
- 4 Department of Agriculture (Parts 4-1—4-99)**
- 5 General Services Administration (Part 5-1—5-99)**
- 5A Office of Acquisition Policy, General Services Administration (Parts 5A-1—5A-99)**
- 6 Department of State (Parts 6-1—6-99)**
- 7 Agency for International Development, International Development Cooperation Agency (Parts 7-1—7-99)**
- 8 Veterans Administration (Parts 8-1—8-99)**
- 9 Department of Energy (Parts 9-1—9-99)**
- 12 Department of Transportation (Parts 12-1—12-99)**
- 13 Department of Commerce (Parts 13-1—13-99)**
- 14 Department of the Interior (Parts 14-1—14-99)**
- 14H Bureau of Indian Affairs, Department of the Interior (Parts 14H-1—14H-99)**
- 14R Office of Water Research and Technology, Department of the Interior (Parts 14R-1—14R-99)**
- 16 Office of Personnel Management (Parts 16-1—16-26)**
- 18 National Aeronautics and Space Administration (Parts 18-1—18-99)**
- 19 United States Information Agency (Parts 19-1—19-99)**
- 20 Nuclear Regulatory Commission (Parts 20-1—20-99)**
- 23 United States Arms Control and Disarmament Agency (Parts 23-1—23-99)**
- 24 Department of Housing and Urban Development (Parts 24-1—24-99)**
- 25 National Science Foundation (Parts 25-1—25-99)**
- 28 Department of Justice (Parts 28-1—28-99)**
- 29 Department of Labor (Parts 29-1—29-99)**
- 34 Department of Education (Parts 34-1—34-99)**

### **Federal Emergency Management Agency (Parts 44-1—44-99)**

### **SUBTITLE B—Other Provisions Relating to Public Contracts**

- 50 Public Contracts, Department of Labor (Parts 50-1—50-999)**
- 51 Committee for Purchase from the Blind and Other Severely Handicapped (Parts 51-1—51-99)**
- 60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-999)**

### **SUBTITLE C—Federal Property Management Regulations System**

- 101 Federal Property Management Regulations (Parts 101-1—101-99)**
- 105 General Services Administration (Parts 105-1—105-999)**
- 109 Department of Energy Property Management Regulations (Parts 109-1—109-99)**

## **Title 41—Public Contracts and Property Management—Continued**

Chap.

- 114 Department of the Interior (Parts 114-1—114-99)
- 115 Environmental Protection Agency (Parts 115-1—115-99)
- 128 Department of Justice (Parts 128-1—128-99)
- SUBTITLE D—Other Provisions Relating to Property Management [Reserved]
- SUBTITLE E—Federal Information Resources Management Regulations System
- 201 Federal Information Resources Management Regulations (Parts 201-1—201-99)

## **Title 42—Public Health**

- I Public Health Service, Department of Health and Human Services (Parts 1-199)
- III Saint Elizabeths Hospital, Department of Health and Human Services (Parts 300-399)
- IV Health Care Financing Administration, Department of Health and Human Services (Parts 400-499)

## **Title 43—Public Lands: Interior**

SUBTITLE A—Office of the Secretary of the Interior (Parts 1-199)

SUBTITLE B—Regulations Relating to Public Lands

- I Bureau of Reclamation, Department of the Interior (Parts 200-499)
- II Bureau of Land Management, Department of the Interior (Parts 1000-9999)

## **Title 44—Emergency Management and Assistance**

- I Federal Emergency Management Agency (Parts 0-399)
- IV Department of Commerce and Department of Transportation (Parts 400-499)

## **Title 45—Public Welfare**

SUBTITLE A—Department of Health and Human Services, General Administration (Parts 1-199)

SUBTITLE B—Regulations Relating to Public Welfare

- II Office of Family Assistance (Assistance Programs), Department of Health and Human Services (Parts 200-299)
- III Office of Child Support Enforcement (Child Support Enforcement Program), Department of Health and Human Services (Parts 300-399)
- IV Office of Refugee Resettlement, Social Security Administration, Department of Health and Human Services (Parts 400-499)
- V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500-599)
- VI National Science Foundation (Parts 600-699)

## **Title 45—Public Welfare—Continued**

- Chap.
- VII Commission on Civil Rights (Parts 700-799)
  - VIII Office of Personnel Management (Parts 800-899)
  - X Office of Community Services, Department of Health and Human Services (Parts 1000-1099)
  - XI National Foundation on the Arts and the Humanities (Parts 1100-1199)
  - XII ACTION (Parts 1200-1299)
  - XIII Office of Human Development Services, Department of Health and Human Services (Parts 1300-1399)
  - XVI Legal Services Corporation (Parts 1600-1699)
  - XVII National Commission on Libraries and Information Science (Parts 1700-1799)
  - XVIII Harry S Truman Scholarship Foundation (Parts 1800-1899)
  - XXI Commission of Fine Arts (Parts 2100-2199)

## **Title 46—Shipping**

- I Coast Guard, Department of Transportation (Parts 1-199)
- II Maritime Administration, Department of Transportation (Parts 200-399)
- III Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400-499)
- IV Federal Maritime Commission (Parts 500-599)

## **Title 47—Telecommunication**

- I Federal Communications Commission (Parts 0-199)
- II Office of Science and Technology Policy and National Security Council (Parts 200-299)

## **Title 40—Federal Acquisition Regulations System**

- 1 Federal Acquisition Regulation (Parts 1-99)
- 2 Department of Defense (Parts 200-299)
- 3 Department of Health and Human Services (300-399)
- 4 Department of Agriculture (Parts 400-499)
- 5 General Services Administration (Parts 500-599)
- 7 Agency for International Development (Parts 700-799)
- 8 Veterans Administration (Parts 800-899)
- 9 Department of Energy (Parts 900-999)
- 10 Department of the Treasury Acquisition/Procurement Regulation (1000-1099)
- 12 Department of Transportation (1200-1299)
- 13 Department of Commerce (Parts 1300-1399)
- 14 Department of the Interior (Parts 1400-1499)
- 15 Environmental Protection Agency (Parts 1500-1599)
- 18 National Aeronautics and Space Administration (Parts 1800-1899)

## **Title 48—Federal Acquisition Regulations System—Continued**

Chap.

- 22 Small Business Administration (Parts 2200-2299)
- 24 Department of Housing and Urban Development (Parts 2400-2499)
- 25 National Science Foundation Acquisition Regulation (Parts 2500-2599)
- 28 Department of Justice (Parts 2800-2899)
- 29 Department of Labor
- 44 Federal Emergency Management Agency Acquisition Regulation (Parts 4400-4499)
- 61 General Services Administration Board of Contract Appeals

## **Title 49—Transportation**

**SUBTITLE A—Office of the Secretary of Transportation (Parts 1-99)**

**SUBTITLE B—Other Regulations Relating to Transportation**

- I Research and Special Programs Administration, Department of Transportation (Parts 100-199)
- II Federal Railroad Administration, Department of Transportation (Parts 200-299)
- III Federal Highway Administration, Department of Transportation (Parts 300-399)
- IV Coast Guard, Department of Transportation (Parts 400-499)
- V National Highway Traffic Safety Administration, Department of Transportation (Parts 500-599)
- VI Urban Mass Transportation Administration, Department of Transportation (Parts 600-699)
- VII National Railroad Passenger Corporation (AMTRAK) (Parts 700-799)
- VIII National Transportation Safety Board (Parts 800-899)
- IX United States Railway Association (Parts 900-999)
- X Interstate Commerce Commission (Parts 1000-1399)

## **Title 50—Wildlife and Fisheries**

- I United States Fish and Wildlife Service, Department of the Interior (Parts 1-199)
- II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200-299)
- III International Regulatory Agencies (Fishing and Whaling) (Parts 300-399)
- IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400-499)
- V Marine Mammal Commission (Parts 500-599)

**Title 50—Wildlife and Fisheries—Continued**

Chap.

- VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600-699)**

**CFR Index and Finding Aids**

**Subject/Agency Index**

**List of CFR Titles, Chapters, Subchapters, and Parts**

**Parallel Tables of Statutory Authorities and Rules**

**Acts Requiring Publication in the Federal Register**





# **Alphabetical List of Agencies Appearing in the CFR**

**(As of March 15, 1985)**

| Agency                                                  | CFR Title, Subtitle or Chapter |
|---------------------------------------------------------|--------------------------------|
| ADDITION                                                | 45, XII                        |
| Acquisition Policy, Office of                           | 41, 5A                         |
| Administrative Committee of the Federal Register        | 1, I                           |
| Administrative Conference of the United States          | 1, III                         |
| Advisory Commission on Intergovernmental Relations      | 5, VII                         |
| Advisory Committee on Federal Pay                       | 5, IV                          |
| Advisory Council on Historic Preservation               | 36, VIII                       |
| African Development Foundation                          | 22, XV                         |
| Agency for International Development                    | 22, II; 41, 7; 48, 7           |
| Agricultural Marketing Service                          | 7, I, IX, X, XI                |
| Agricultural Research Service                           | 7, V                           |
| Agricultural Stabilization and Conservation Service     | 7, VII                         |
| Agriculture Department                                  |                                |
| Agricultural Marketing Service                          | 7, I, IX, X, XI                |
| Agricultural Research Service                           | 7, V                           |
| Agricultural Stabilization and Conservation Service     | 7, VII                         |
| Animal and Plant Health Inspection Service              | 7, III; 9, I, III              |
| Commodity Credit Corporation                            | 7, XIV                         |
| Contract Appeals, Board of                              | 7, XXIV                        |
| Cooperative State Research Service                      | 7, XXXIV                       |
| Energy, Office of                                       | 7, XXXIX                       |
| Environmental Quality, Office of                        | 7, XXXI                        |
| Farmers Home Administration                             | 7, XVIII                       |
| Federal Acquisition Regulation                          | 48, 4                          |
| Federal Crop Insurance Corporation                      | 7, IV                          |
| Federal Grain Inspection Service                        | 7, VIII                        |
| Federal Procurement Regulations System                  | 41, 4                          |
| Food and Nutrition Service                              | 7, II                          |
| Food Safety and Inspection Service                      | 9, III                         |
| Foreign Agricultural Service                            | 7, XV                          |
| Foreign Economic Development Service                    | 7, XXI                         |
| Forest Service                                          | 36, II                         |
| General Sales Manager, Office of                        | 7, XXV                         |
| Grants and Program Systems, Office of                   | 7, XXXII                       |
| Information Resources Management, Office of             | 7, XXVII                       |
| Inspector General, Office of                            | 7, XXVI                        |
| International Cooperation and Development Office        | 7, XXXI                        |
| Operations and Finance, Office of                       | 7, XXX                         |
| Packers and Stockyards Administration                   | 9, II                          |
| Rural Electrification Administration                    | 7, XVII                        |
| Rural Telephone Bank                                    | 7, XVI                         |
| Secretary of Agriculture, Office of                     | 7, Subtitle A                  |
| Soil Conservation Service                               | 7, VI                          |
| State Department                                        | 32, VII                        |
| Alaska Natural Gas Transportation System, Office of the |                                |
| Federal Inspector                                       | 10, XV                         |
| Alcohol, Tobacco and Firearms, Bureau of                | 27, I                          |
| MTAK                                                    | 49, VII                        |
| American Battle Monuments Commission                    | 36, IV                         |
| Animal and Plant Health Inspection Service              | 7, III; 9, I                   |
| Appalachian Regional Commission                         | 5, IX                          |

| Agency                                                                | CFR Title, Subtitle or Chapter |
|-----------------------------------------------------------------------|--------------------------------|
| Architectural and Transportation Barriers Compliance Board            | 36, XI                         |
| Arms Control and Disarmament Agency, U.S.                             | 22, VI; 41, 23                 |
| Army Department                                                       | 32, V                          |
| Engineers, Corps of                                                   | 33, II; 36, III                |
| Benefits Review Board                                                 | 20, VII                        |
| Bilingual Education and Minority Languages Affairs, Office of         | 34, V                          |
| Blind and Other Severely Handicapped, Committee for Purchase from     | 41, 51                         |
| Board for International Broadcasting                                  | 22, XIII                       |
| Budget, Office of Management and                                      | 5, III                         |
| Census Bureau                                                         | 15, I                          |
| Central Intelligence Agency                                           | 32, XIX                        |
| Child Support Enforcement, Office of                                  | 45, III                        |
| Civil Rights Commission                                               | 45, VII                        |
| Civil Rights, Office for (Education Department)                       | 34, I                          |
| Claims Collection Standards, Federal                                  | 4, II                          |
| Coast Guard                                                           | 33, I; 46, I, III; 49, IV      |
| Commerce Department                                                   | 44, IV                         |
| Census Bureau                                                         | 15, I                          |
| Economic Analysis, Bureau of                                          | 15, VIII                       |
| Economic Development Administration                                   | 13, III                        |
| Endangered Species Committee                                          | 50, IV                         |
| Federal Acquisition Regulation                                        | 48, 13                         |
| Federal Procurement Regulations System                                | 41, 13                         |
| Fishery Conservation and Management                                   | 50, VI                         |
| Industrial Economics, Bureau of                                       | 15, VI                         |
| International Trade Administration                                    | 15, III; 19, III               |
| National Bureau of Standards                                          | 15, II                         |
| National Marine Fisheries Service                                     | 50, II, IV                     |
| National Oceanic and Atmospheric Administration                       | 15, IX; 50, II, III, IV, VI    |
| National Telecommunications and Information Administration            | 15, XXIII                      |
| Patent and Trademark Office                                           | 37, I                          |
| Productivity, Technology and Innovation, Assistant Secretary          | 37, IV                         |
| Secretary of Commerce, Office of                                      | 15, Subtitle A                 |
| United States Travel Service                                          | 15, XII                        |
| Committee for Purchase from Blind and Other Severely Handicapped      | 41, 51                         |
| Commodity Credit Corporation                                          | 7, XIV                         |
| Commodity Futures Trading Commission                                  | 17, I                          |
| Community Planning and Development, Office of Assistant Secretary for | 24, V, VI                      |
| Community Services, Office of                                         | 45, X                          |
| Comptroller of the Currency                                           | 12, I                          |
| Construction Industry Collective Bargaining Commission                | 29, IX                         |
| Consumer Product Safety Commission                                    | 16, II                         |
| Contract Appeals, Board of                                            | 7, XXIV                        |
| Cooperative State Research Service                                    | 7, XXXIV                       |
| Copyright Office                                                      | 37, II                         |
| Copyright Royalty Tribunal                                            | 37, III                        |
| Council on Environmental Quality                                      | 40, V                          |
| Customs Service, United States                                        | 19, I                          |
| Defense Department                                                    | 32, Subtitle A                 |
| Air Force Department                                                  | 32, VII                        |
| Army Department                                                       | 32, V; 33, II; 36, III         |
| Engineers, Corps of                                                   | 33, II; 36, III                |
| Federal Acquisition Regulation                                        | 48, 2                          |
| Navy Department                                                       | 32, VI                         |
| Secretary of Defense, Office of                                       | 32, I                          |
| Defense Logistics Agency                                              | 32, XII                        |
| Delaware River Basin Commission                                       | 18, III                        |
| Depository Institutions Deregulation Committee                        | 12, XII                        |

| Agency                                                                       | CFR Title, Subtitle or Chapter |
|------------------------------------------------------------------------------|--------------------------------|
| Enforcement Administration                                                   | 21, II                         |
| West Foreign Trade Board                                                     | 15, XIII                       |
| conomic Analysis, Bureau of                                                  | 15, VIII                       |
| conomic Development Administration                                           | 13, III                        |
| ication, Department of                                                       |                                |
| ilingual Education and Minority Languages Affairs, Office of                 | 34, V                          |
| ivil Rights, Office for                                                      | 34, I                          |
| educational Research and Improvement, Office of                              | 34, VII                        |
| ementary and Secondary Education, Office of                                  | 34, II                         |
| ederal Procurement Regulations System                                        | 41, 34                         |
| ostsecondary Education, Office of                                            | 34, VI                         |
| ecretary of Education, Office of                                             | 34, Subtitle A                 |
| pecial Education and Rehabilitative Services, Office of                      | 34, III                        |
| ocational and Adult Education, Office of                                     | 34, IV                         |
| ucational Research and Improvement, Office of                                | 34, VII                        |
| ementary and Secondary Education, Office of                                  | 34, II                         |
| mployee Benefits Security, Office of                                         | 29, XXV                        |
| mployees' Compensation Appeals Board                                         | 20, IV                         |
| mployees Loyalty Board, International Organizations                          | 5, V                           |
| mployment and Training Administration                                        | 20, V                          |
| mployment Standards Administration                                           | 20, VI                         |
| dangered Species Committee                                                   | 50, IV                         |
| ergy, Department of                                                          | 10, II, III, X; 41, 109        |
| ederal Acquisition Regulation                                                | 48, 9                          |
| ederal Energy Regulatory Commission                                          | 18, I                          |
| ederal Procurement Regulations System                                        | 41, 9                          |
| ergy, Office of, Department of Agriculture                                   | 7, XXIX                        |
| ngineers, Corps of                                                           | 33, II; 36, III                |
| graving and Printing, Bureau of                                              | 31, VI                         |
| vironmental Protection Agency                                                | 40, I; 41, 115; 48, 15         |
| vironmental Quality, Office of (Agriculture Department)                      | 7, XXXI                        |
| ual Employment Opportunity Commission                                        | 29, XIV                        |
| ual Opportunity, Office of Assistant Secretary for                           | 24, I                          |
| ecutive Office of the President                                              | 3, I                           |
| Administration, Office of                                                    | 5, XV                          |
| port-Import Bank of the United States                                        | 12, IV                         |
| mily Assistance, Office of                                                   | 45, II                         |
| rm Credit Administration                                                     | 12, VI                         |
| rmers Home Administration                                                    | 7, XVIII                       |
| ederal Acquisition Regulation                                                | 48, I                          |
| ederal Aviation Administration                                               | 14, I                          |
| ederal Claims Collection Standards                                           | 4, II                          |
| ederal Communications Commission                                             | 47, I                          |
| ederal Contract Compliance Programs, Office of                               | 41, 60                         |
| ederal Crop Insurance Corporation                                            | 7, IV                          |
| ederal Deposit Insurance Corporation                                         | 12, III                        |
| ederal Election Commission                                                   | 11, I                          |
| ederal Emergency Management Agency                                           | 41, 44; 44, I; 48, 44          |
| ederal Energy Regulatory Commission                                          | 18, I                          |
| ederal Financial Institutions Examination Council                            | 12, XI                         |
| ederal Financing Bank                                                        | 12, VIII                       |
| ederal Grain Inspection Service                                              | 7, VIII                        |
| ederal Highway Administration                                                | 23, I, II; 49, III             |
| ederal Home Loan Bank Board                                                  | 12, V                          |
| ederal Home Loan Mortgage Corporation                                        | 1, IV                          |
| ederal Information Resources Management Regulations                          | 41, Subtitle E, Ch. 201        |
| ederal Inspector for the Alaska Natural Gas Transportation System, Office of | 10, XV                         |
| ederal Labor Relations Authority, and General Counsel of                     |                                |
| the Federal Labor Relations Authority                                        | 5, XIV; 22, XIV                |
| ederal Law Enforcement Training Center                                       | 31, VII                        |
| ederal Maritime Commission                                                   | 46, IV                         |
| ederal Mediation and Conciliation Service                                    | 29, XII                        |
| ederal Mine Safety and Health Review Commission                              | 29, XXVII                      |
| ederal Pay, Advisory Committee on                                            | 5, IV                          |

| Agency                                                                  | CFR Title, Subtitle or Chapter |
|-------------------------------------------------------------------------|--------------------------------|
| Federal Prison Industries                                               | 28, III                        |
| Federal Procurement Regulations                                         | 41, I                          |
| Federal Procurement Regulations System                                  | 41, Subtitle A                 |
| Federal Property Management Regulations                                 | 41, 101                        |
| Federal Property Management Regulations System                          | 41, Subtitle C                 |
| Federal Railroad Administration                                         | 49, II                         |
| Federal Register, Administrative Committee of                           | 1, I                           |
| Federal Register, Office of                                             | 1, II                          |
| Federal Reserve System                                                  | 12, II                         |
| Federal Service Impasses Panel                                          | 5, XIV                         |
| Federal Trade Commission                                                | 16, I                          |
| Fine Arts Commission                                                    | 36, X; 45, XXI                 |
| Fiscal Service                                                          | 31, II                         |
| Fish and Wildlife Service, United States                                | 50, I, IV                      |
| Fishery Conservation and Management                                     | 50, VI                         |
| Fishing and Whaling, International Regulatory Agencies                  | 50, III                        |
| Food and Drug Administration                                            | 21, I                          |
| Food and Nutrition Service                                              | 7, II                          |
| Food Safety and Inspection Service                                      | 9, III                         |
| Foreign Agricultural Service                                            | 7, XV                          |
| Foreign Assets Control, Office of                                       | 31, V                          |
| Foreign Claims Settlement Commission of United States                   | 45, V                          |
| Foreign Economic Development Service                                    | 7, XXI                         |
| Foreign Service Grievance Board                                         | 22, IX                         |
| Foreign Service Impasse Disputes Panel                                  | 22, XIV                        |
| Foreign Service Labor Relations Board                                   | 22, XIV                        |
| Foreign-Trade Zones Board                                               | 15, IV                         |
| Forest Service                                                          | 36, II                         |
| General Accounting Office                                               | 4, I, II, III                  |
| General Sales Manager, Office of                                        | 7, XXV                         |
| General Services Administration                                         | 41, 5                          |
| Acquisition Policy, Office of                                           | 41, 5A                         |
| Contract Appeals Board                                                  | 48, 61                         |
| Federal Acquisition Regulation                                          | 48, 5                          |
| Federal Information Resources Management Regulations                    | 41, Subtitle E, Ch. 201        |
| Federal Procurement Regulations System                                  | 41, 1, 5A                      |
| Federal Property Management Regulations System                          | 41, 101, 105                   |
| Geological Survey                                                       | 30, IV                         |
| Government National Mortgage Association                                | 24, III                        |
| Grants and Program Systems, Office of                                   | 7, XXXII                       |
| Great Lakes Pilotage                                                    | 46, III                        |
| Harry S Truman Scholarship Foundation                                   | 45, XVIII                      |
| Health and Human Services, Department of                                | 45, Subtitle A                 |
| Child Support Enforcement, Office of                                    | 45, III                        |
| Community Services, Office of                                           | 45, X                          |
| Family Assistance, Office of                                            | 45, II                         |
| Federal Acquisition Regulation                                          | 48, 3                          |
| Federal Procurement Regulations System                                  | 41, 3                          |
| Food and Drug Administration                                            | 21, I                          |
| Health Care Financing Administration                                    | 42, IV                         |
| Human Development Services Office                                       | 45, XIII                       |
| Public Health Service                                                   | 42, I                          |
| Refugee Resettlement, Office of                                         | 45, IV                         |
| St. Elizabeths Hospital                                                 | 42, III                        |
| Social Security Administration                                          | 20, III; 45, IV                |
| Health Care Financing Administration                                    | 42, IV                         |
| Housing and Urban Development, Department of                            |                                |
| Community Planning and Development, Office of Assistant Secretary for   | 24, V, VI                      |
| Equal Opportunity, Office of Assistant Secretary for                    | 24, I                          |
| Federal Acquisition Regulation                                          | 48, 24                         |
| Federal Procurement Regulations System                                  | 41, 24                         |
| Government National Mortgage Association                                | 24, III                        |
| Housing—Federal Housing Commissioner, Office of Assistant Secretary for | 24, II, VIII, X, XX            |
| Inspector General, Office of                                            | 24, XII                        |

| Agency                                                                      | CFR Title, Subtitle or Chapter |
|-----------------------------------------------------------------------------|--------------------------------|
| Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act | 24, XV                         |
| Public and Indian Housing, Office of Assistant Secretary for                | 24, IX                         |
| Secretary, Office of                                                        | 24, Subtitle A, VII            |
| Solar Energy and Energy Conservation Bank                                   | 24, XI                         |
| Using—Federal Housing Commissioner, Office of Assistant Secretary for       | 24, II, VIII, X, XX            |
| Human Development Services Office                                           | 45, XIII                       |
| Immigration and Naturalization Service                                      | 8, I                           |
| Indian Affairs, Bureau of                                                   | 25, I; 41, 14H                 |
| Indian Arts and Crafts Board                                                | 25, II                         |
| Industrial Economics, Bureau of, Commerce Department                        | 15, VI                         |
| Information Agency, United States                                           | 22, V; 41, 19                  |
| Information Resources Management, Office of, Agriculture Department         | 7, XXVII                       |
| Information Security Oversight Office                                       | 32, XX                         |
| Inspector General, Office of, Agriculture Department                        | 7, XXVI                        |
| Inspector General, Office of, Housing and Urban Development Department      | 24, XII                        |
| Inter-American Foundation                                                   | 22, X                          |
| Intergovernmental Relations, Advisory Commission on                         | 5, VII                         |
| Interior Department                                                         | 50, IV                         |
| Endangered Species Committee                                                | 48, 14                         |
| Federal Acquisition Regulation                                              | 41, 14                         |
| Federal Procurement Regulations System                                      | 41, 114                        |
| Federal Property Management Regulations System                              | 50, I, IV                      |
| Fish and Wildlife Service, United States                                    | 30, IV                         |
| Geological Survey                                                           | 25, I; 41, 14H                 |
| Indian Affairs, Bureau of                                                   | 25, II                         |
| Indian Arts and Crafts Board                                                | 43, II                         |
| Land Management Bureau                                                      | 30, II                         |
| Minerals Management Service                                                 | 30, VI                         |
| Mines, Bureau of                                                            | 36, I                          |
| National Park Service                                                       | 43, I                          |
| Reclamation Bureau                                                          | 43, Subtitle A                 |
| Secretary of the Interior, Office of                                        | 30, III                        |
| Surface Mining and Reclamation Appeals, Board of                            | 30, VII                        |
| Surface Mining Reclamation and Enforcement, Office of                       | 50, I, IV                      |
| United States Fish and Wildlife Service                                     | 41, 14R                        |
| Water Research and Technology, Office of                                    | 18, IV                         |
| Water Resources Research, Office of                                         | 26, I                          |
| Internal Revenue Service                                                    | 22, XI                         |
| International Boundary and Water Commission, United States and Mexico       | 7, XXII                        |
| International Cooperation and Development Office                            | 22, II; 41, 7                  |
| International Development, Agency for                                       | 22, XII                        |
| International Development Cooperation Agency                                | 22, II; 41, 7                  |
| International Development, Agency for                                       | 22, IV                         |
| International Joint Commission, United States and Canada                    | 5, V                           |
| International Organizations Employees Loyalty Board                         | 50, III                        |
| International Regulatory Agencies (Fishing and Whaling)                     | 15, III; 19, III               |
| International Trade Administration                                          | 19, II                         |
| International Trade Commission, United States                               | 49, X                          |
| Interstate Commerce Commission                                              | 20, VIII                       |
| Joint Board for the Enrollment of Actuaries                                 | 28, I; 41, 128                 |
| Justice Department                                                          | 21, II                         |
| Drug Enforcement Administration                                             | 48, 28                         |
| Federal Acquisition Regulation                                              | 4, II                          |
| Federal Claims Collection Standards                                         | 28, III                        |
| Federal Prison Industries                                                   | 41, 28                         |
| Federal Procurement Regulations System                                      | 45, V                          |
| Foreign Claims Settlement Commission of the United States                   | 8, I                           |
| Immigration and Naturalization Service                                      | 28, V                          |
| Prisons, Bureau of                                                          |                                |

| Agency                                                                                                                       | CFR Title, Subtitle or Chapter |
|------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| <b>Labor Department</b>                                                                                                      |                                |
| Benefits Review Board                                                                                                        | 20, VII                        |
| Employees' Compensation Appeals Board                                                                                        | 20, IV                         |
| Employment and Training Administration                                                                                       | 20, V                          |
| Employment Standards Administration                                                                                          | 20, VI                         |
| Federal Acquisition Regulation                                                                                               | 48, 29                         |
| Federal Contract Compliance Programs, Office of                                                                              | 41, 60                         |
| Federal Procurement Regulations System                                                                                       | 41, 29, 50                     |
| Labor-Management Relations, Office of the Assistant Secretary                                                                | 29, II                         |
| Labor-Management Standards Enforcement, Office of                                                                            | 29, IV                         |
| Mine Safety and Health Administration                                                                                        | 30, I                          |
| Occupational Safety and Health Administration                                                                                | 29, XVII                       |
| Pension and Welfare Benefit Programs                                                                                         | 29, XXV                        |
| Public Contracts                                                                                                             | 41, 50                         |
| Secretary of Labor, Office of                                                                                                | 29, Subtitle A                 |
| Wage and Hour Division                                                                                                       | 29, V                          |
| Workers' Compensation Programs, Office of                                                                                    | 20, I                          |
| Labor-Management Relations, Office of Assistant Secretary                                                                    | 29, II                         |
| Labor-Management Standards Enforcement, Office of                                                                            | 29, IV                         |
| Land Management, Bureau of                                                                                                   | 43, II                         |
| Legal Services Corporation                                                                                                   | 45, XVI                        |
| Library of Congress                                                                                                          | 36, VII                        |
| Copyright Office                                                                                                             | 37, II                         |
| Low-Income Housing, Department of Housing and Urban Development                                                              | 24, VIII                       |
| Management and Budget, Office of                                                                                             | 5, III                         |
| Marine Mammal Commission                                                                                                     | 50, V                          |
| Maritime Administration                                                                                                      | 46, II                         |
| Merit Systems Protection Board                                                                                               | 5, II                          |
| Micronesian Status Negotiations, Office for                                                                                  | 32, XXVII                      |
| Mine Safety and Health Administration                                                                                        | 30, I                          |
| Minerals Management Service                                                                                                  | 30, II                         |
| Mines, Bureau of                                                                                                             | 30, VI                         |
| Minority Business Development Agency                                                                                         | 15, XIV                        |
| Miscellaneous Agencies                                                                                                       | 1, IV                          |
| Monetary Offices                                                                                                             | 31, I                          |
| Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development | 24, XV                         |
| National Aeronautics and Space Administration                                                                                | 14, V; 41, 18; 48, 18          |
| National Bureau of Standards                                                                                                 | 15, II                         |
| National Capital Planning Commission                                                                                         | 1, IV                          |
| National Commission on Libraries and Information Science                                                                     | 45, XVII                       |
| National Credit Union Administration                                                                                         | 12, VII                        |
| National Foundation on the Arts and the Humanities                                                                           | 45, XI                         |
| National Highway Traffic Safety Administration                                                                               | 23, II, III; 49, V             |
| National Labor Relations Board                                                                                               | 29, I                          |
| National Marine Fisheries Service                                                                                            | 50, II, IV                     |
| National Mediation Board                                                                                                     | 29, X                          |
| National Oceanic and Atmospheric Administration                                                                              | 15, IX; 50, II, III, IV, VI    |
| National Park Service                                                                                                        | 36, I                          |
| National Railroad Adjustment Board                                                                                           | 29, III                        |
| National Railroad Passenger Corporation (AMTRAK)                                                                             | 49, VII                        |
| National Science Foundation                                                                                                  | 41, 25; 45, VI; 48, 25         |
| National Security Council                                                                                                    | 32, XXI                        |
| National Security Council and Office of Science and Technology Policy                                                        | 47, II                         |
| National Telecommunications and Information Administration                                                                   | 15, XXIII                      |
| National Transportation Safety Board                                                                                         | 49, VIII                       |
| Navajo and Hopi Indian Relocation Commission                                                                                 | 25, IV                         |
| Navy Department                                                                                                              | 32, VI                         |
| Neighborhood Reinvestment Corporation                                                                                        | 24, XXV                        |
| Nuclear Regulatory Commission                                                                                                | 10, I; 41, 20                  |

| Agency                                                                  | CFR Title, Subtitle or Chapter |
|-------------------------------------------------------------------------|--------------------------------|
| Occupational Safety and Health Administration                           | 29, XVII                       |
| Occupational Safety and Health Review Commission                        | 29, XX                         |
| Overseas Private Investment Corporation                                 | 22, VII                        |
| Packers and Stockyards Administration                                   | 9, II                          |
| Panama Canal Regulations                                                | 35, I                          |
| Patent and Trademark Office                                             | 37, I                          |
| Peace Corps                                                             | 22, III                        |
| Pennsylvania Avenue Development Corporation                             | 36, IX                         |
| Pension Benefit Guaranty Corporation                                    | 29, XXVI                       |
| Pension and Welfare Benefit Programs, Department of Labor               | 29, XXV                        |
| Personnel Management, Office of                                         | 5, I; 41, 16; 45, VIII         |
| Postal Rate Commission                                                  | 39, III                        |
| Postal Service, United States                                           | 39, I                          |
| Postsecondary Education, Office of                                      | 34, VI                         |
| President's Commission on White House Fellowships                       | 1, IV                          |
| Presidential Documents                                                  | 3                              |
| Pensions, Bureau of                                                     | 28, V                          |
| Procurement Regulations System, Federal                                 | 41, Subtitle A                 |
| Productivity, Technology and Innovation, Assistant Secretary (Commerce) | 37, IV                         |
| Property Management Regulations System, Federal                         | 41, Subtitle C                 |
| Public Contracts, Department of Labor                                   | 41, 50                         |
| Public Health Service                                                   | 42, I                          |
| Railroad Retirement Board                                               | 20, II                         |
| Railway Association, United States                                      | 49, IX                         |
| Relocation Bureau                                                       | 43, I                          |
| Refugee Resettlement, Office of                                         | 45, IV                         |
| Regional Action Planning Commissions                                    | 13, V                          |
| Research and Special Programs Administration                            | 49, I                          |
| Rail Electrification Administration                                     | 7, XVII                        |
| Rail Telephone Bank                                                     | 7, XVI                         |
| St. Elizabeths Hospital                                                 | 42, III                        |
| St. Lawrence Seaway Development Corporation                             | 33, IV                         |
| Science and Technology Policy, Office of                                | 32, XXIV                       |
| Science and Technology Policy, Office of, and National Security Council | 47, II                         |
| Secret Service                                                          | 31, IV                         |
| Securities and Exchange Commission                                      | 17, II                         |
| Selective Service System                                                | 32, XVI                        |
| Small Business Administration                                           | 13, I; 48, 22                  |
| Smithsonian Institution                                                 | 36, V                          |
| State Security Administration                                           | 20, III; 45, IV                |
| State Conservation Service                                              | 7, VI                          |
| State Energy and Energy Conservation Bank, Department of                | 24, X                          |
| State Department                                                        | 5, XI                          |
| State Department of Defense                                             | 34, III                        |
| State Department of Education                                           | 15, XX                         |
| State Department of Health                                              | 22, I                          |
| State Department of Labor                                               | 41, 6                          |
| State Department of Justice                                             | 30, III                        |
| State Department of the Interior                                        | 18, VIII                       |
| State Department of the Treasury                                        | 18, XIII                       |
| State Department of War                                                 | 15, XX                         |
| State Department of Transportation                                      | 44, IV                         |
| State Department of the Coast Guard                                     | 33, I; 46, I, III; 49, IV      |
| State Department of the Federal Acquisition Regulation                  | 48, 12                         |
| State Department of the Federal Aviation Administration                 | 14, I                          |
| State Department of the Federal Highway Administration                  | 23, I, II; 49, III             |
| State Department of the Federal Procurement Regulations System          | 41, 12                         |
| State Department of the Federal Railroad Administration                 | 49, II                         |
| State Department of the Maritime Administration                         | 46, II                         |
| State Department of the National Highway Traffic Safety Administration  | 23, II, III; 49, V             |
| State Department of the Research and Special Programs Administration    | 49, I                          |
| State Department of the Saint Lawrence Seaway Development Corporation   | 33, IV                         |



| Agency                                                     | CPR Title, Subtitle or Chapter |
|------------------------------------------------------------|--------------------------------|
| Secretary of Transportation, Office of                     | 14, II; 49, Subtitle A         |
| Urban Mass Transportation Administration                   | 49, VI                         |
| Travel Service, United States                              | 15, XII                        |
| Treasury Department                                        |                                |
| Alcohol, Tobacco and Firearms, Bureau of                   | 27, I                          |
| Comptroller of the Currency                                | 12, I                          |
| Customs Service, United States                             | 19, I                          |
| Engraving and Printing, Bureau of                          | 31, VI                         |
| Federal Acquisition Regulation                             | 48, 10                         |
| Federal Law Enforcement Training Center                    | 31, VII                        |
| Fiscal Service                                             | 31, II                         |
| Foreign Assets Control, Office of                          | 31, V                          |
| Internal Revenue Service                                   | 26, I                          |
| Monetary Offices                                           | 31, I                          |
| Secret Service                                             | 31, IV                         |
| Secretary of the Treasury, Office of                       | 31, Subtitle A                 |
| United States Customs Service                              | 19, I                          |
| Truman, Harry S. Scholarship Foundation                    | 45, XVIII                      |
| United States and Canada, International Joint Commission   | 22, IV                         |
| United States Arms Control and Disarmament Agency          | 22, VI; 41, 23                 |
| United States Customs Service                              | 19, I                          |
| United States Fish and Wildlife Service                    | 50, I, IV                      |
| United States Information Agency                           | 22, V; 41, 19                  |
| United States International Development Cooperation Agency | 22, XII                        |
| United States International Trade Commission               | 19, II                         |
| United States Postal Service                               | 39, I                          |
| United States Railway Association                          | 49, IX                         |
| United States Soldiers' and Airmen's Home                  | 5, XI                          |
| United States Trade Representative, Office of              | 15, XX                         |
| United States Travel Service                               | 15, XII                        |
| Urban Mass Transportation Administration                   | 49, VI                         |
| Veterans Administration                                    | 38, I; 41, 8; 48, 8            |
| Vice President of the United States, Office of             | 32, XXVIII                     |
| Vocational and Adult Education, Office of                  | 34, IV                         |
| Wage and Hour Division                                     | 29, V                          |
| Water Research and Technology, Office of                   | 41, 14R                        |
| Water Resources Council                                    | 18, VI                         |
| Water Resources Research, Office of                        | 18, IV                         |
| Welfare-Pension Reports, Office of Labor-Management and    | 29, IV                         |
| Workers' Compensation Programs, Office of                  | 20, I                          |

## List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the **FEDERAL REGISTER** since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to **FEDERAL REGISTER** pages. The user should consult the entries for chapters and parts as well as section for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes.

### 1973-1974

(Regulations published from January 1, 1973 through March 31, 1974)

#### 23 CFR

38 (39\*) FR  
Page

##### Chapter I

Chapter restructured.....\*10430

Expansion of chapter to Parts 1-1199.....10811

1.9 Existing text designated as (a) and revised; (b) and (c) added.....18368

1.32 Revised.....\*1512

1.37 Introductory text revised....11086

1 Appendix A amended...12104, 16044, 33465

2 Redesignated as Part 16.....\*10430

15 Redesignated as Subpart A of Part 660.....\*10430

16 Redesignated from Part 2.....\*10430

20 Redesignated as Part 750, Subpart A.....16044

21 Redesignated as Part 750, Subpart B.....16044

21.3 (a)(2) revised.....5242

22 Redesignated as Part 750, Subpart C.....16044

25 Redesignated as Subpart C of Part 650.....\*10430

305 Added.....11341

305 Redesignated as Part 642....\*10430

424 (Subchapter G) Added.....29959

424 Redesignated as Part 645....\*10430

642 Redesignated from Part 305.....\*10430

645 Redesignated from Part 424.....\*10430

NOTE: Symbol (\*) refers to 1974 page numbers.

#### 23 CFR—Continued

38 (39\*) FR  
Page

##### Chapter I—Continued

650.301-650.311 (Subpart C)

Redesignated from Part 15... \*10430

652 Added.....\*10581

658 Added.....\*3937

660.1-660.11 Redesignated from Part 15.....\*10430

713.201-713.208 (Subpart B)

Redesignated from Part 720, Subpart E.....\*10430

720 Added.....11342

720.200-720.204 (Subpart B) Added.....31828

720.203 (b) and (c) revised.....\*9431

720.501-720.508 (Subpart E)

Redesignated as 713.201-713.208 (Subpart B).....\*10430

740 Added.....29971

740.3 (q) removed.....\*1428

740.52 (b) and (l) revised; (p)(11) added.....\*1428

740.54 (b)(2) and (e)(1) revised; (b)(4) added.....\*1428

(e)(2) and (4) revised; (e)(5) added.....\*1429

740.56 (a)(2) revised.....\*1429

750 Added; provisions derived from Parts 20, 21, 22.....16044

750.319 (a)(1) and (2) amended...29318

765 Added.....\*4078

770 Added.....31677

772 Added.....15953

772.30 Added.....\*6697

790 Added.....12104

790.9 (f) revised.....15956

795 Added.....16056

##### Chapter II

204 Redesignated as Part 1204....10811

## 23 CFR (4-1-85 Edition)

### 23 CFR—Continued

|                                      | 38 (39*) FR<br>Page |
|--------------------------------------|---------------------|
| Chapter II—Continued                 |                     |
| 1204 Redesignated from Part 204..... | 10811               |
| 1204.4 Amended.....                  | 12401               |
| 1230 Added.....                      | 18665               |

### 1974-1975

(Regulations published from April 1,  
1974 through March 31, 1975)

### 23 CFR

|                                                                                | 39 (40†) FR<br>Page |
|--------------------------------------------------------------------------------|---------------------|
| Chapter I                                                                      |                     |
| 1.6 Removed.....                                                               | 35142               |
| 1.10 Removed.....                                                              | 36327               |
| 1.13 Removed.....                                                              | 35152               |
| 1.14 Removed.....                                                              | †7647               |
| 1.15-1.22 Removed.....                                                         | 35152               |
| 1.24 Removed.....                                                              | 35152               |
| 1.26 Removed.....                                                              | †10951              |
| 1.30 Removed.....                                                              | 17306               |
| 1.35 Revised.....                                                              | 28628               |
| 1 Appendix A removed.....                                                      | 41821               |
| 11 Added.....                                                                  | 26407               |
| 12 Added.....                                                                  | 40493               |
| 17 Added.....                                                                  | 17306               |
| 130.201-130.209 (Subpart B)<br>Added.....                                      | 26407               |
| 130.301-130.310 (Subpart C)<br>Added.....                                      | 26408               |
| 130.401-130.406 (Subpart D)<br>Added.....                                      | 18093               |
| 140.301-140.304 (Subpart C)<br>Added.....                                      | 26410               |
| 140.401-140.404 (Subpart D)<br>Added.....                                      | 26410               |
| 140.501-140.504 (Subpart E)<br>Added.....                                      | 26410               |
| 140.601-140.609 (Subpart F)<br>Added.....                                      | 26411               |
| 140.701-140.708 (Subpart G)<br>Added.....                                      | 26412               |
| 140.801-140.805 (Subpart H)<br>Added.....                                      | 28876               |
| 160 Added.....                                                                 | 26413               |
| 170 Added.....                                                                 | 36327               |
| 190 Added.....                                                                 | 13880               |
| 260 Added.....                                                                 | 34521               |
| 260.401-260.411 (Subpart D)<br>Added.....                                      | 35141               |
| 420 Added.....                                                                 | 36472               |
| 420.103 (b) and (c) redesignated<br>as (c) and (d); new (b) added...<br>†10951 |                     |

NOTE: Symbol (\*) refers to 1974 page numbers.

NOTE: Symbol (†) refers to 1975 page numbers.

### 23 CFR—Continued

|                                                        | 39 (40†) FR<br>Page |
|--------------------------------------------------------|---------------------|
| Chapter I—Continued                                    |                     |
| 420.201-420.206 (Subpart B)<br>Added.....              | 40946               |
| 420.204 Added.....                                     | 40946               |
| (c) corrected.....                                     | 42354               |
| 470 Added.....                                         | 35142               |
| 470.301-470.307 (Subpart C)<br>Added.....              | 37637               |
| 473 Added.....                                         | 39658               |
| 473.104 (a) (2) corrected.....                         | 40763               |
| 476 Added.....                                         | 20663               |
| 476.2 Amended.....                                     | 39659               |
| 476.600-476.612 (Subpart G)<br>Added.....              | 20667               |
| 490 Added.....                                         | 35142               |
| 490.101-490.111 (Subpart A)<br>Appendix A revised..... | †2581               |
| 620.101-620.104 (Subpart A)<br>Added.....              | 35145               |
| 620.201-620.203 (Subpart B)<br>Added.....              | 33311               |
| 620.301-620.315 (Subpart C)<br>Added.....              | 36328               |
| 620.309 Corrected.....                                 | 39097               |
| 625 Added.....                                         | 35145               |
| 625.3 (c) (11) revised (Jan. 10).....                  | †2179               |
| 630.201-630.204 (Subpart B)<br>Added.....              | 36473               |
| 630.301-630.306 (Subpart C)<br>Added.....              | 35348               |
| Appendix A amended.....                                | †6491               |
| 630.302 Added.....                                     | 35348               |
| (h) revised.....                                       | †6491               |
| 630.401-630.404 (Subpart D)<br>Added.....              | 26414               |
| 630.501-630.510 (Subpart E)<br>Added.....              | 36330               |
| 630.601-630.606 (Subpart F)<br>Added.....              | 29173               |
| 630.604 Amended.....                                   | 33670               |
| 630.701 Revised.....                                   | †12260              |
| 630.702 Revised.....                                   | †12260              |
| Republished.....                                       | 17554               |
| 630.801-630.803 (Subpart H)<br>Added.....              | 36474               |
| 633 Added.....                                         | 20371               |
| 633.201-633.211 (Subpart B)<br>Added.....              | 35146               |
| 633.301-633.302 (Subpart C)<br>Added.....              | 22418               |
| 635.101-635.205 (Subparts A<br>and B) Added.....       | 35152               |
| 635.301-635.305 (Subpart C)<br>Added.....              | 27130               |
| 637 Added.....                                         | 11879               |

# **List of CFR Sections Affected**

## **23 CFR—Continued**

| Chapter I—Continued                                                                                                                                                   | 39 (40†) FR<br>Page |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| 7.201—637.205 (Subpart B)                                                                                                                                             |                     |
| Added.....                                                                                                                                                            | 35649               |
| 10 Added.....                                                                                                                                                         | 17310               |
| 15 Heading revised.....                                                                                                                                               | 36474               |
| 16 Added.....                                                                                                                                                         | 36474               |
| Appendix A amended.....                                                                                                                                               | †7647               |
| 50 Heading revised.....                                                                                                                                               | 29174               |
| 50.101—650.111 (Subpart A)                                                                                                                                            |                     |
| Added.....                                                                                                                                                            | 36331               |
| 50.201—650.209 (Subpart B)                                                                                                                                            |                     |
| Added.....                                                                                                                                                            | 36331               |
| 50.301 Amended.....                                                                                                                                                   | 29589               |
| 50.303 (a) and (c) revised.....                                                                                                                                       | 29590               |
| 50.305 (a) revised.....                                                                                                                                               | 29590               |
| 50.309 Revised.....                                                                                                                                                   | 29590               |
| 50.311 (b) revised.....                                                                                                                                               | 37194               |
| 50.401—650.408 (Subpart D)                                                                                                                                            |                     |
| Added.....                                                                                                                                                            | 29174               |
| 50.501—650.508 (Subpart E)                                                                                                                                            |                     |
| Added.....                                                                                                                                                            | 34399               |
| 52.2 (h) corrected.....                                                                                                                                               | 12732               |
| 55.101—655.107 (Subpart A)                                                                                                                                            |                     |
| Added.....                                                                                                                                                            | 26415               |
| Heading amended.....                                                                                                                                                  | 45215               |
| 55.102 Correctly designated.....                                                                                                                                      | 45215               |
| 55.104 Correctly designated.....                                                                                                                                      | 45212               |
| (b) corrected.....                                                                                                                                                    | 45215               |
| 55.105 Correctly designated.....                                                                                                                                      | 45215               |
| (b)(9) corrected.....                                                                                                                                                 | 45215               |
| 55.201—655.213 (Subpart B)                                                                                                                                            |                     |
| Added.....                                                                                                                                                            | 16443               |
| 55.301—655.310 (Subpart C)                                                                                                                                            |                     |
| Added.....                                                                                                                                                            | 30346               |
| 55.401—655.409 (Subpart D)                                                                                                                                            |                     |
| Added.....                                                                                                                                                            | 33208               |
| 55.501—655.508 (Subpart E)                                                                                                                                            |                     |
| Added.....                                                                                                                                                            | 27434               |
| 55.601—655.610 (Subpart F)                                                                                                                                            |                     |
| Added.....                                                                                                                                                            | 35650               |
| 55.601 Added.....                                                                                                                                                     | 35650               |
| Amended.....                                                                                                                                                          | 37637               |
| 55.603 (a) amended and new<br>(a)(2) added; (b) redesignated<br>as (a)(1)(iv) and amended; (c)<br>redesignated as (b) and<br>amended; (d) redesignated as<br>(c)..... | 44746               |
| 55.604 (a) amended; (b) cor-<br>rectly designated and amend-<br>ed.....                                                                                               | 44746               |
| 55.605 Added.....                                                                                                                                                     | 35650               |
| (e) corrected.....                                                                                                                                                    | 36860               |
| 55.609 (b)(3) amended.....                                                                                                                                            | 44746               |
| 656 Added.....                                                                                                                                                        | 28628               |

Note: Symbol (†) refers to 1975 page numbers.

## **23 CFR—Continued**

| Chapter I—Continued                                             | 39 (40†) FR<br>Page |
|-----------------------------------------------------------------|---------------------|
| 656.11 Revised.....                                             | †3584               |
| 660.201—660.213 (Subpart B)                                     |                     |
| Added.....                                                      | 36333               |
| 660.301—660.306 (Subpart C)                                     |                     |
| Added.....                                                      | 30930               |
| 665 Added.....                                                  | 30930               |
| 710 Added.....                                                  | 26416               |
| 710.104 (g) corrected.....                                      | 45215               |
| 710.304 (c), (d)(2) and (3), (j) (5),<br>and (m) corrected..... | 45215               |
| 710.305 (a)(1)(ii), (2), and (3)<br>corrected.....              | 45215               |
| 712.101—712.103 (Subpart A)                                     |                     |
| Added.....                                                      | 29590               |
| 712.103 (r) revised.....                                        | †3982               |
| 712.201—712.204 (Subpart B)                                     |                     |
| Added.....                                                      | 29591               |
| 712.301—712.304 (Subpart C)                                     |                     |
| Added.....                                                      | 29592               |
| 712.401—712.403 (Subpart D)                                     |                     |
| Added.....                                                      | 26421               |
| Redesignated as 712.701—<br>712.703 (Subpart G).....            | 28629               |
| 712.401—712.408 (Subpart D)                                     |                     |
| Added.....                                                      | 29593               |
| Correction.....                                                 | 34277               |
| 712.501—712.504 (Subpart E)                                     |                     |
| Added.....                                                      | 32604               |
| 712.503 (b) corrected.....                                      | 33797               |
| (c) revised.....                                                | †2179               |
| 712.601—712.606 (Subpart F)                                     |                     |
| Added.....                                                      | 33312               |
| 712.701—712.703 (Subpart G)                                     |                     |
| Redesignated from 712.401—<br>712.403 (Subpart D).....          | 28629               |
| 712.702 (d) Revised.....                                        | †8948               |
| 713 Revised.....                                                | 34651               |
| 713.302 (c) revised.....                                        | †3767               |
| 740.77 (d) revised.....                                         | 17222               |
| 750.101—750.110 (Subpart A)                                     |                     |
| Heading revised.....                                            | 28629               |
| 750.101 (a) revised.....                                        | 28629               |
| 750.201—750.210 (Subpart C)                                     |                     |
| Removed.....                                                    | 30346               |
| 750.301—750.308 (Subpart D)                                     |                     |
| Revised.....                                                    | 27436               |
| 750.302 Section number and<br>heading correctly added.....      | 30349               |
| 751 Added.....                                                  | †8552               |
| 751.1 Corrected.....                                            | †12260              |
| 751.19 (d) corrected.....                                       | †12260              |
| 752 Added.....                                                  | 24630               |
| 752.106 (d) corrected; (e) re-<br>moved.....                    | 32031               |
| 752.107 Revised.....                                            | 32031               |

## 23 CFR (4-1-85 Edition)

### 23 CFR—Continued

| Chapter I—Continued                             | 39 (40†) FR<br>Page |
|-------------------------------------------------|---------------------|
| 753 Added.....                                  | 32032               |
| 753.4 Correctly designated from<br>753.104..... | 36478, 37771        |
| 753.104 Correctly designated as<br>753.4.....   | 36478, 37771        |
| 770 Revised.....                                | 44441               |
| 771 Added.....                                  | 41805               |
| 790 Revised.....                                | 41815               |
| 790.3 (d) revised.....                          | 16122               |
| 795 Revised.....                                | 41819               |
| 820 Added.....                                  | 39264               |
| Removed.....                                    | †6347               |
| Chapter II                                      |                     |
| 1204.4 Suspended in part.....                   | 40949               |
| 1206 Added.....                                 | 19206               |
| 1213 Added.....                                 | 13157               |
| 1214 Added.....                                 | †11371              |

### 1975-1976

(Regulations published from April 1,  
1975 through March 31, 1976)

### 23 CFR

| Chapter I                                                                             | 40 (41Δ) FR<br>Page |
|---------------------------------------------------------------------------------------|---------------------|
| Nomenclature changes.....45805                                                        |                     |
| 1.8 Removed; eff. 10-1-76.....                                                        | Δ8168               |
| 1.12 Removed; eff. 10-1-76.....                                                       | Δ8168               |
| 1.25 Removed (provisions re-<br>codified in Part 646 Subpart<br>B).....               | 16057               |
| 1.29 Removed.....                                                                     | 24519               |
| 130.403 Amended.....                                                                  | Δ10430              |
| 140.603 Amended.....                                                                  | Δ10430              |
| 140.604 (c) and (b) amended.....                                                      | Δ10430              |
| 140.606 Amended.....                                                                  | Δ10430              |
| 140.607 (a) amended.....                                                              | Δ10430              |
| 140.802 Amended.....                                                                  | Δ10430              |
| 140.900-140.922 (Subpart I)<br>Added.....                                             | 16057               |
| Appendix A amended.....                                                               | 29712               |
| 140.922 (a), (b) and (c) redesign-<br>ated as (b), (c) and (d); new<br>(a) added..... | 29712               |
| Technical correction.....                                                             | 31211               |
| 160.201-160.204 (Subpart B)<br>Added.....                                             | 29817               |
| 230 Added.....                                                                        | 28053               |
| 230.103 Amended.....                                                                  | Δ3080               |
| 230.111 (e)(2) corrected.....                                                         | 57358               |
| (e)(1) and (2) and (f)(1) and (2)<br>amended.....                                     | Δ3080               |

NOTE: Symbol (†) refers to 1975 page numbers.

NOTE: Symbol (Δ) refers to 1976 page numbers.

### 23 CFR—Continued

| Chapter I—Continued                                                                            | 40 (41Δ) FR<br>Page |
|------------------------------------------------------------------------------------------------|---------------------|
| 230.113 (f)(6) through (11) re-<br>designated as (f)(7) through<br>(12); new (f)(6) added..... | Δ3080               |
| 230.201-230.209 (Subpart B)<br>Added.....                                                      | 50712               |
| 260 Revised.....                                                                               | 58633               |
| Authority citations added (cor-<br>rection).....                                               | Δ6249               |
| 420.104 (a) amended.....                                                                       | Δ10430              |
| 420.203 (a)(4) revised.....                                                                    | 17554               |
| 420.205 (a) and (b) amended.....                                                               | 17554               |
| 420.206 (a) revised.....                                                                       | 17554               |
| 420.300-420.312 (Subpart C)<br>Added.....                                                      | 53726               |
| Effective date confirmed; com-<br>ment time extended.....                                      | Δ8476               |
| 450 Added.....                                                                                 | 38151               |
| 450.100-450.122 (Subpart A)<br>Added.....                                                      | 42977               |
| 450.104 Amended.....                                                                           | 57799               |
| 450.300-450.320 (Subpart C)<br>Added.....                                                      | 42982               |
| 450.304 (b) amended.....                                                                       | 57799               |
| 460 Added.....                                                                                 | 44322               |
| 470 Revised; eff. 7-1-76.....                                                                  | 42344               |
| 625.3 (a)(11), (12), footnote<br>added.....                                                    | 53728               |
| 630.102-630.116 (Subpart A)<br>Added.....                                                      | 57801               |
| 630.301-630.306 (Subpart C)<br>Appendix A revised.....                                         | 55640               |
| Appendix B revised.....                                                                        | 55643               |
| 630.302 (e) amended.....                                                                       | 55639               |
| 630.304 (b) and (c)(9) amended;<br>(d) revised.....                                            | 55639               |
| 630.305 (b) amended.....                                                                       | 55640               |
| 630.306 (b) amended.....                                                                       | 55640               |
| 630.702 Corrected.....                                                                         | 17554               |
| 633.101-633.107 (Subpart A)<br>Appendix A revised.....                                         | 42867               |
| Appendix B revised.....                                                                        | 42871               |
| 633.101 Revised.....                                                                           | 42867               |
| 633.104 Amended.....                                                                           | 42867               |
| 633.105 Revised.....                                                                           | 42867               |
| 633.107 Revised.....                                                                           | 42867               |
| 633.201-633.211 (Subpart B)<br>Appendixes A and B revised.....                                 | 49084               |
| Appendix C revised.....                                                                        | 49088               |
| 633.202 (b) amended.....                                                                       | 49084               |
| (c) removed.....                                                                               | Δ8769               |
| 633.204 (b) amended.....                                                                       | 49084, Δ8769        |
| 633.207 (b) and (e) amended.....                                                               | 49084               |
| 633.211 Heading and text re-<br>vised.....                                                     | 49084               |
| 635.103 amended.....                                                                           | 14906               |

# **List of CFR Sections Affected**

| <b>23 CFR—Continued</b>           | <b>40 (41A) FR<br/>Page</b> |
|-----------------------------------|-----------------------------|
| <b>Chapter I—Continued</b>        |                             |
| 635.104 (a) amended.....          | 14906                       |
| 635.107 (e) amended.....          | 14906                       |
| (h) corrected.....                | 36319                       |
| 635.110 (c) amended.....          | 14906                       |
| 635.115 (e)(2) amended.....       | 14906                       |
| 635.124 (a)(1) amended.....       | 14906                       |
| 635.202 Amended.....              | 14906                       |
| 635.205 (a)(1) and (b) amended..  | 14906                       |
| 635.301—635.309 (Subpart C)       |                             |
| Revised.....                      | 17251                       |
| 635.307 (b)(3) revised.....       | 25585                       |
| 635.309 (b) corrected.....        | 36319                       |
| 640 Revised.....                  | Δ6916                       |
| 640.5 (c) and (e) amended.....    | 53728                       |
| 640.9 (b) and (e) amended.....    | 53728                       |
| 640.11 (a) amended.....           | 53728                       |
| 640.13 (b) amended.....           | 53729                       |
| 640.15 (a) amended; (b) revised.. | 53729                       |
| Appendix A added.....             | 53729                       |
| 642.7 (a) and (c) amended.....    | Δ10430                      |
| 646.200—646.220 (Subpart B)       |                             |
| Added.....                        | 16059                       |
| 646.216 (e)(2)(ii) revised.....   | 29712                       |
| 646.220 (b)(2) corrected.....     | 31211                       |
| 652.1 Amended.....                | Δ9321                       |
| 652.3—652.6 Redesignated as       |                             |
| 652.4—652.6 and 652.9, respec-    |                             |
| tively; new 652.3 added.....      | 53730                       |
| 652.7 Added.....                  | 53730                       |
| 652.8 Added.....                  | 53730                       |
| 652.9 Redesignated from 652.6;    |                             |
| (c) added.....                    | 53730                       |
| 655.205 (d)(1) amended.....       | Δ10430                      |
| 655.506 (b) (3), (4) and (5)      |                             |
| amended.....                      | Δ10430                      |
| 655.608 (d) amended.....          | Δ10430                      |
| 655.701—655.707 (Subpart G)       |                             |
| Added.....                        | 20078                       |
| 658 Revised.....                  | 24520                       |
| 658.7 Added.....                  | 41775                       |
| 658.9 (b) revised.....            | Δ7095                       |
| 658.17 Added.....                 | 42186                       |
| 662 Added.....                    | 14907                       |
| 663 Added.....                    | Δ8344                       |
| Effective date corrected.....     | Δ8950                       |
| 710.206 (b) amended.....          | 29073                       |
| 710.304 (b)(5) added.....         | 41524                       |
| (b)(2), (f), and (i) amended..... | Δ9321                       |
| 712.204 (c) revised.....          | 33445                       |
| (g) amended.....                  | Δ9321                       |
| 712.502 Amended.....              | Δ9321                       |
| 712.504 (b)(6) amended.....       | Δ9321                       |
| 712.702 (b) amended.....          | Δ9321                       |

NOTE: Symbol (Δ) refers to 1976 page numbers.

| <b>23 CFR—Continued</b>         | <b>40 (41A) FR<br/>Page</b> |
|---------------------------------|-----------------------------|
| <b>Chapter I—Continued</b>      |                             |
| 712.801—712.804 (Subpart H)     |                             |
| Added.....                      | 53236                       |
| 712.804 (d)(4) corrected.....   | 55643                       |
| 713.302 (b) amended.....        | Δ9321                       |
| 713.304 (b) amended.....        | Δ9321                       |
| 720.201 (b)(3) amended.....     | Δ9321                       |
| 740.9 (d) redesignated as (e);  |                             |
| new (d) added.....              | 25585                       |
| (d) and (e) effective date re-  |                             |
| vised.....                      | 30818                       |
| 740.55 (b) introductory text    |                             |
| amended.....                    | Δ9321                       |
| 750.103 (b) amended.....        | Δ9321                       |
| 750.106 (a) amended; source     |                             |
| note corrected.....             | Δ9321                       |
| 750.151—750.155 (Subpart B)     |                             |
| Heading revised.....            | 21934                       |
| 750.151 (a)(2) amended.....     | 21934                       |
| 750.152 Revised.....            | 21934                       |
| 750.153 (m) amended.....        | 21934                       |
| (t) added.....                  | 21935                       |
| 750.155 Amended.....            | 21934                       |
| 750.308 Footnote added.....     | Δ9321                       |
| 750.701—750.713 (Subpart G)     |                             |
| Added.....                      | 42844                       |
| 750.705 (c) corrected.....      | 49777                       |
| 751.7 Footnote removed; (d)     |                             |
| amended.....                    | Δ9321                       |
| 751.25 Footnote removed; (a)    |                             |
| amended.....                    | Δ9321                       |
| 770.205 (b)(4); (c)(5) and (d)  |                             |
| amended.....                    | Δ9321                       |
| 771.18 Footnote removed;        |                             |
| (i)(2)(ix) revised.....         | Δ9321                       |
| 771.22 Added.....               | 60052                       |
| 820 Added.....                  | 16301                       |
| Authority citation revised..... | Δ3080                       |
| 820.11 (k) added.....           | Δ3080                       |
| 820.17 Redesignated as 820.19   |                             |
| and revised; new 820.17         |                             |
| added.....                      | Δ3080                       |
| 820.19 Added.....               | Δ3080                       |
| <b>Chapter II</b>               |                             |
| 1204.4 Partial temporary waiver |                             |
| of Std. No. 5.....              | 30639                       |
| 1204 Supplements A through I    |                             |
| added.....                      | 53730                       |

## 1976-1977

(Regulations published from April 1,  
1976 through March 31, 1977)

## 23 CFR

41 (42\*) FR  
Page

## Chapter I

|                                                                                                       |              |
|-------------------------------------------------------------------------------------------------------|--------------|
| 130.401—130.409 (Subpart D)                                                                           |              |
| Revised.....                                                                                          | 27962        |
| 140.604 (c) corrected.....                                                                            | 15690        |
| 140.703 (f) amended.....                                                                              | 45547        |
| Amended.....                                                                                          | 49484        |
| 140.704 (a) and (b) amended.....                                                                      | 49484        |
| 140.900—140.992 (Subpart I) Appendix A amended.....                                                   | 48516, *7137 |
| 160.101—160.105 (Subpart A)                                                                           |              |
| Revised.....                                                                                          | 54169        |
| 160.201—160.204 (Subpart B)                                                                           |              |
| Redesignated as 160.301—160.307 (Subpart C); new 160.201—160.205 (Subpart B) added.....               | 54169        |
| 160.301—160.307 (Subpart C)                                                                           |              |
| Redesignated from 160.201—160.204 (Subpart B).....                                                    | 54169        |
| 200 Added.....                                                                                        | 53982        |
| 230.301—230.313 (Subpart C)                                                                           |              |
| Added.....                                                                                            | 28270        |
| Appendix A form revised.....                                                                          | 46294        |
| 230.305 (c) and (d) revised.....                                                                      | 46293        |
| 230.401—230.415 (Subpart D)                                                                           |              |
| Added.....                                                                                            | 34239        |
| Appendixes A through D added.....                                                                     | 34245        |
| 260 Revised.....                                                                                      | 44034        |
| 260.401—260.411 (Subpart D)                                                                           |              |
| Revised.....                                                                                          | 50646        |
| 420.101—420.109 (Subpart A)                                                                           |              |
| Revised.....                                                                                          | 31531        |
| 420.300—420.310 (Subpart C)                                                                           |              |
| Revised.....                                                                                          | 33441        |
| 450.100—450.122 (Subpart A)                                                                           |              |
| Appendix amended.....                                                                                 | 18235        |
| 470 Effective date confirmed.....                                                                     | 26856        |
| Heading revised; existing text redesignated as 470.101—470.117 (Subpart A) and Appendixes A to C..... | 51396        |
| 470.307 Revised.....                                                                                  | 51396        |
| 473 Removed.....                                                                                      | 26856        |
| 490.107 (e) through (g) removed; (h) and (i) redesignated as (e) and (f).....                         | *7137        |
| 490.109 (c) amended.....                                                                              | *7138        |
| 520 Added.....                                                                                        | 55176        |
| 522 Added.....                                                                                        | 55176        |

NOTE: Symbol (\*) refers to 1977 page numbers.

## 23 CFR—Continued

41 (42\*) FR  
Page

## Chapter I—Continued

|                                                                                               |              |
|-----------------------------------------------------------------------------------------------|--------------|
| 524 Added.....                                                                                | 55177        |
| 530 Added.....                                                                                | 55177        |
| 540 Added.....                                                                                | 55178        |
| 542 Added.....                                                                                | 55178        |
| 544 Added.....                                                                                | 55179        |
| 560 Added.....                                                                                | 55179        |
| 625 Revised.....                                                                              | *6           |
| 625.3 (a)(11) footnote designation corrected; (c)(3) and (e) footnote designations added..... | *3642        |
| 625 Appendix A amended.....                                                                   | *3642        |
| 630.304 (b) revised.....                                                                      | 33253        |
| 630.501—630.519 (Subpart E)                                                                   |              |
| Revised.....                                                                                  | 22813        |
| 630.513 (d) corrected.....                                                                    | 24347        |
| 630.901—630.903 (Subpart I)                                                                   |              |
| Added.....                                                                                    | 43139        |
| 633.207 (e) amended.....                                                                      | 36204        |
| 635.101—635.128 (Subpart A)                                                                   |              |
| Appendix A removed.....                                                                       | 36204        |
| 635.115 Removed.....                                                                          | 36204        |
| 635.116 Removed.....                                                                          | 36204        |
| 635.117 Removed.....                                                                          | 36204        |
| 635.401—635.413 (Subpart D)                                                                   |              |
| Added.....                                                                                    | 36204        |
| 637.101—637.111 (Subpart A)                                                                   |              |
| Revised.....                                                                                  | 18072        |
| 650.601—650.613 (Subpart F)                                                                   |              |
| Added.....                                                                                    | 18297        |
| 655.201—655.213 (Subpart B)                                                                   |              |
| Redesignated and revised as Part 920.....                                                     | 52447        |
| 655.407 (c) amended.....                                                                      | 36206        |
| 655.502 (d) added.....                                                                        | 53003        |
| 655.507 Amended.....                                                                          | 53003, *4835 |
| 655.605 (c)(3) amended.....                                                                   | 36206        |
| 655.606 (b) corrected.....                                                                    | 23380        |
| (a) amended.....                                                                              | 36206        |
| 655.608 (d) amended.....                                                                      | 36206        |
| 655.801—655.805 (Subpart H)                                                                   |              |
| Added.....                                                                                    | 28477        |
| 655.803 (a) corrected.....                                                                    | 31532        |
| 656 Revised.....                                                                              | 26215        |
| 658.7 (a), (c)(1) and (2) revised.....                                                        | 49808, 49811 |
| 660.213 Revised.....                                                                          | 31197        |
| 661 Interim regulation.....                                                                   | 21637        |
| Comment time extended.....                                                                    | 31197, 33280 |
| Added.....                                                                                    | 52449        |
| 663 Revised.....                                                                              | 23380        |
| 712.204 (g)(3) revised.....                                                                   | 24347        |
| 712.702 (d) revised.....                                                                      | 24347        |
| 712.801—712.805 (Subpart H)                                                                   |              |
| Revised.....                                                                                  | *8           |

## List of CFR Sections Affected

### 23 CFR—Continued

41 (42\*) FR  
Page

|                                                                                           |       |
|-------------------------------------------------------------------------------------------|-------|
| Chapter I—Continued                                                                       |       |
| 0 Revised.....                                                                            | 48682 |
| 0.57 (b)(4) amended.....                                                                  | 54756 |
| 0.78 (b)(3) corrected.....                                                                | 51396 |
| 0.118 (a)(5) (vi) through (xi)<br>redesignated as (a) (6)<br>through (11).....            | 54756 |
| 10 Appendix A corrected.....                                                              | 51396 |
| 50.302 (a) revised; (b) text des-<br>ignated as (b)(1); (b)(2)<br>added.....              | 31198 |
| 50.306 (c) added.....                                                                     | 31198 |
| 50.501—750.503 (Subpart E)<br>Added.....                                                  | 45827 |
| 72 Revised.....                                                                           | 16936 |
| 20 (Subchapter J) Redesignat-<br>ed and revised from 655.201—<br>655.213 (Subpart B)..... | 52447 |
| Chapter II                                                                                |       |
| 204 Supplement C amended.....                                                             | 23948 |
| 215 Added.....                                                                            | 54170 |
| 250 (Subchapter C and Part)<br>Added.....                                                 | 23949 |

### 1977—1978

(Regulations published from April 1,  
1977 through March 31, 1978)

### 23 CFR

42 (43†) FR  
Page

|                                                                                           |       |
|-------------------------------------------------------------------------------------------|-------|
| Chapter I                                                                                 |       |
| 1.301 Amended.....                                                                        | 59069 |
| 1.302 Revised.....                                                                        | 59069 |
| 1.303 Amended.....                                                                        | 59069 |
| 1.304 Added.....                                                                          | 59069 |
| 130.403 Introductory text<br>amended; (b) (1) and (2) re-<br>vised; footnote removed..... | †5514 |
| 130.409 (a) and (b) amended; (c)<br>added.....                                            | †5514 |
| 160.103 (d) amended.....                                                                  | 41279 |
| 160.105 Removed.....                                                                      | 41279 |
| 160.203 (f) amended.....                                                                  | 41279 |
| 160.205 Removed.....                                                                      | 41279 |
| 160.301—160.307 (Subpart C)<br>Revised.....                                               | 59263 |
| 260.101—260.117 (Subpart A)<br>Revised.....                                               | †3558 |
| 630.601—630.606 (Subpart F)<br>Removed.....                                               | †1491 |
| 635.104 (b) corrected.....                                                                | 30835 |
| 640 Revised.....                                                                          | †1330 |
| 642 Revised.....                                                                          | †1332 |

NOTE: Asterisk (\*) refers to 1977 page numbers.

NOTE: Symbol (†) refers to 1978 page numbers.

### 23 CFR—Continued

42 (43†) FR  
Page

|                                                          |       |
|----------------------------------------------------------|-------|
| Chapter I—Continued                                      |       |
| 645.201—645.209 (Subpart B)<br>Appendix A corrected..... | 30835 |
| 646.220 (b) (1) and (2) correct-<br>ed.....              | 30835 |
| 650.605 (a)(3) footnotes 1 and 2<br>corrected.....       | 30835 |
| 655.603 (c) removed.....                                 | 41280 |
| 655.607 (g) revised.....                                 | 41280 |
| 655.608 (f) revised.....                                 | 41280 |
| 655.801—655.805 (Subpart H)<br>Removed.....              | 41634 |
| 666 Added.....                                           | 49932 |
| 712.204 (d)(1) revised.....                              | 26652 |
| 720.202 (f)(2)(i) corrected.....                         | 30835 |
| 740.7 (f) corrected.....                                 | 30835 |
| 750.304 (c)(4) corrected.....                            | 30835 |
| 771.12 (g) amended; (d)(2) re-<br>vised.....             | 65151 |
| 771.14 (d) introductory text and<br>(1) revised.....     | 65151 |
| 771.19 (g) corrected.....                                | 30835 |
| 790.9 (f) removed.....                                   | 26652 |
| 810 Added.....                                           | 47338 |
| 922 Added.....                                           | 28535 |

### Chapter II

|                                                      |       |
|------------------------------------------------------|-------|
| 1204.4 Supplement B amended...                       | 36250 |
| Supplement C amended.....                            | 36251 |
| Supplement C removed; Sup-<br>plement B revised..... | †9144 |
| 1214 Rule extended through<br>1978 FY.....           | 64623 |
| 1215 Interim rule extended<br>through 1978 FY.....   | 64623 |

### 1978—1979

(Regulations published from April 1,  
1978 through March 31, 1979)

### 23 CFR

43 (44Δ) FR  
Page

|                                             |       |
|---------------------------------------------|-------|
| Chapter I                                   |       |
| 17 Revised.....                             | 41387 |
| 130.201—130.209 (Subpart B)<br>Removed..... | 16167 |
| 130.301—130.310 (Subpart C)<br>Removed..... | 16167 |
| 140.101—140.111 (Subpart A)<br>Added.....   | 57872 |
| 140.201—140.207 (Subpart B)<br>Added.....   | 57873 |
| 140.301—140.304 (Subpart C)<br>Removed..... | 16167 |

NOTE: Symbol (Δ) refers to 1979 page numbers.



## 23 CFR (4-1-85 Edition)

### 23 CFR—Continued

43 (44A) FR  
Page

|                                                                                           |        |
|-------------------------------------------------------------------------------------------|--------|
| Chapter I—Continued                                                                       |        |
| 140.401—140.404 (Subpart D)                                                               |        |
| Removed.....                                                                              | 16167  |
| 140.900—140.922 (Subpart I) Appendix A tables amended.....                                | 27518  |
| Appendix A authority citation added.....                                                  | Δ9379  |
| 190 Revised.....                                                                          | 42742  |
| 230.121 (a)(1) and (2), (d)(1) and (2) amended; (e) removed; (f) redesignated as (e)..... | 19386  |
| 230.201—230.209 (Subpart B)                                                               |        |
| Appendix A amended.....                                                                   | 19386  |
| Appendix C revised.....                                                                   | 19387  |
| Appendix E revised.....                                                                   | 19388  |
| Appendix F revised.....                                                                   | 19389  |
| 260.401—260.407 (Subpart D)                                                               |        |
| Revised.....                                                                              | 35477  |
| 420.306 (b)(2) and (h)(1) revised; (g) amended.....                                       | 15626  |
| 470.107 (a)(1) and (2), (d)(2), and (e)(1) amended.....                                   | 38384  |
| 470.109 (a)(2), (b)(2), (c)(2), and (d)(2) amended.....                                   | 38384  |
| 480 Added.....                                                                            | 54077  |
| 625 Revised.....                                                                          | 14648  |
| 625.3 (e)(1) revised.....                                                                 | 27787  |
| (b)(1), (d)(2), and Note revised.....                                                     | 56660  |
| 626 Added.....                                                                            | 35030  |
| 630.102—630.114 (Subpart A)                                                               |        |
| Revised.....                                                                              | 34461  |
| 630.110 (b) revised.....                                                                  | Δ11542 |
| 630.201—630.205 (Subpart B)                                                               |        |
| Revised.....                                                                              | 58564  |
| 630.501—630.519 (Subpart E)                                                               |        |
| Removed.....                                                                              | 59483  |
| 630.901—630.902 (Subpart I) Removed.....                                                  | Δ11755 |
| 630.1002—630.1010 (Subpart J)                                                             |        |
| Added.....                                                                                | 47140  |
| Technical correction.....                                                                 | 58368  |
| 635.410 Added.....                                                                        | 53717  |
| 637.201—637.207 (Subpart B)                                                               |        |
| Revised.....                                                                              | Δ2171  |
| 640 Revised.....                                                                          | 46964  |
| 646.111 (a) revised.....                                                                  | 22177  |
| 650.401—650.413 (Subpart D)                                                               |        |
| Revised.....                                                                              | 35031  |
| 650.401—650.415 (Subpart D)                                                               |        |
| Revised.....                                                                              | Δ15665 |
| 652 Revised.....                                                                          | 17814  |
| 655.101—655.109 (Subpart A)                                                               |        |
| Revised.....                                                                              | 58564  |
| 655.301—655.310 (Subpart C)                                                               |        |
| Revised.....                                                                              | Δ6709  |

NOTE: Symbol (Δ) refers to 1979 page numbers.

### 23 CFR—Continued

43 (44A) FR  
Page

|                                                                              |               |
|------------------------------------------------------------------------------|---------------|
| Chapter I—Continued                                                          |               |
| 655.501—655.508 (Subpart E)                                                  |               |
| Correctly removed.....                                                       | Δ11544, 12648 |
| 658.7 (d) revised.....                                                       | 59464         |
| 660.501—660.511 (Subpart E)                                                  |               |
| Added.....                                                                   | 43712         |
| 661.3 (d) revised.....                                                       | Δ11542        |
| 661.5 (a), (d), (f), and (g) revised.....                                    | Δ11542        |
| 668 Added.....                                                               | 59483         |
| 668.201—668.215 (Subpart B)                                                  |               |
| Added.....                                                                   | 59485         |
| 710.206 Removed.....                                                         | 38818         |
| 752 Revised; interim.....                                                    | 19390         |
| 753 Removed; interim.....                                                    | 19390         |
| 771.9 (d)(7) revised.....                                                    | 20979         |
| Authority citation added.....                                                | Δ12995        |
| 771.14 (c)(5) removed; (c)(4) revised.....                                   | 20979         |
| Authority citation added.....                                                | Δ12995        |
| 771.19 (f) through (h), (i) introductory text, (j), (l) and (n) revised..... | 20979         |
| Authority citation added.....                                                | Δ12995        |
| 771.21 (e)(2) revised.....                                                   | 20980         |
| Authority citation added.....                                                | Δ12995        |
| 772.13 (e)(3) amended.....                                                   | 45838         |
| 772.25 Revised.....                                                          | 45838         |
| 810.202 Correctly designated; heading added.....                             | 15321         |
| 825 Added.....                                                               | 58308         |
| 920 Revised.....                                                             | 18668         |
| 922.5 Revised.....                                                           | Δ6381         |
| Republished.....                                                             | Δ7656         |
| 922.9 (a) revised.....                                                       | Δ6381         |
| (a) republished.....                                                         | Δ7656         |
| 924 Added.....                                                               | Δ11544        |

## 1979—1980

(Regulations published from April 1, 1979 through March 31, 1980)

### 23 CFR

44 (45\*) FR  
Page

#### Chapter I

|                                 |       |
|---------------------------------|-------|
| 17.5 (c) revised.....           | 36383 |
| 140.501—140.505 (Subpart E)     |       |
| Revised.....                    | 59233 |
| 140.801—140.807 (Subpart H)     |       |
| Revised.....                    | 59233 |
| 170 Removed.....                | 75553 |
| 172 Added.....                  | 75553 |
| 230.201—230.209 (Subpart B)     |       |
| Appendixes C and D revised..... | 46831 |

NOTE: Asterisk (\*) refers to 1980 page numbers.

## List of CFR Sections Affected

### 23 CFR—Continued

44 (45\*) FR  
Page

|                                                                |        |
|----------------------------------------------------------------|--------|
| Chapter I—Continued                                            |        |
| 260.407 (b) amended.....                                       | *6378  |
| 420.201—420.206 (Subpart B)                                    |        |
| Removed.....                                                   | 75555  |
| Correctly removed.....                                         | *1418  |
| 620.301—620.315 (Subpart C)                                    |        |
| Removed.....                                                   | 75555  |
| Correctly removed.....                                         | *1418  |
| 630 Authority citation amended.....                            | 46835  |
| 630.114 (a) amended; (h) added.....                            | 46835  |
| 630.1010 (a)(5) added.....                                     | 53740  |
| 635.501—635.509 (Subpart E)                                    |        |
| Added.....                                                     | *20793 |
| 637.101—637.111 (Subpart A)                                    |        |
| Removed.....                                                   | 23212  |
| 646.200 (c) amended.....                                       | *20795 |
| 646.220 (d)(1)(ii) and (iii) amended.....                      | *20795 |
| 650.101—650.117 (Subpart A)                                    |        |
| Revised.....                                                   | 67580  |
| 650.301 Revised.....                                           | 25435  |
| 650.303 (a) and (c) revised.....                               | 25435  |
| 650.307 (a)(3) and (b)(2) revised.....                         | 25435  |
| 650.311 Revised.....                                           | 25435  |
| 650.407 (a) revised.....                                       | 72112  |
| 650.411 (c) revised.....                                       | 72112  |
| 658.7 (d)(2)(i), (ii), and (iii), and (5) revised.....         | 55593  |
| (d)(2)(i), (ii), and (iii), and (5) comment time extended..... | 63660  |
| 660.301—660.306 (Subpart C)                                    |        |
| Removed.....                                                   | 40065  |
| 667 Added.....                                                 | 40065  |
| 713.308 (b) revised.....                                       | 73019  |
| 770.207 Added; interm.....                                     | 66193  |
| Effective date corrected.....                                  | 68458  |
| 772.25 (d) revised.....                                        | 30683  |
| Chapter II                                                     |        |
| Chapter heading revised.....                                   | 28792  |

### 1980—1981

(Regulations published from April 1, 1980 through March 31, 1981)

### 23 CFR

45 (46†) FR  
Page

|                                   |       |
|-----------------------------------|-------|
| Chapter I                         |       |
| Chapter I Interpretation.....     | †32   |
| 140.701—140.715 (Subpart G)       |       |
| Revised.....                      | †3501 |
| Effective date deferred...†10707, | 10907 |

NOTE: Asterisk (\*) refers to 1980 page numbers.

### 23 CFR—Continued

45 (46†) FR  
Page

|                                                                     |               |
|---------------------------------------------------------------------|---------------|
| Chapter I—Continued                                                 |               |
| 260.105 Amended.....                                                | 67091         |
| 420.105 (d) added.....                                              | 58036         |
| 420.111 Added.....                                                  | 58036         |
| 450.100—450.122 (Subpart A)                                         |               |
| Guidelines.....                                                     | 70249         |
| 450.100—450.124 (Subpart A)                                         |               |
| Revised.....                                                        | †5709         |
| Effective date deferred...†10707,                                   | 10907         |
| Effective date deferred to 6-30-81.....                             | †19233        |
| 450.120 (a) (6) and (8) revised.....                                | 58036         |
| 450.200 (b) amended.....                                            | †5714         |
| (b) effective date deferred...†10707,                               | 10907         |
| (b) effective date deferred to 6-30-81.....                         | †19233        |
| 450.202 Nomenclature change; (c) amended.....                       | †5714         |
| Nomenclature change and (c) effective date deferred...†10707,       | 10907         |
| Nomenclature change and (c) effective date deferred to 6-30-81..... | †19233        |
| 450.204 Nomenclature change.....                                    | †5714         |
| Nomenclature change effective date deferred.....                    | †10707, 10907 |
| Nomenclature change effective date deferred to 6-30-81.....         | †19233        |
| 450.206 Nomenclature change; (b) amended.....                       | †5714         |
| Nomenclature change and (b) effective date deferred...†10707,       | 10907         |
| Nomenclature change and (b) effective date deferred to 6-30-81..... | †19233        |
| 450.300—450.320 (Subpart C)                                         |               |
| Guidelines.....                                                     | 70249         |
| Revised.....                                                        | †5714         |
| Effective date deferred...†10707,                                   | 10907         |
| Effective date deferred to 6-30-81.....                             | †19233        |
| 450.302 (a)(4) revised.....                                         | 69399         |
| 450.304 (b) amended.....                                            | 69399         |
| 450.310 (b) amended; (f) added..                                    | 69399         |
| 450.318 (a) revised; (b) (1) and (2) amended.....                   | 69399         |
| (b)(3) amended.....                                                 | 69400         |
| 450.320 (a) (1)(ii) and (iii) amended.....                          | 69399         |

NOTE: Symbol (†) refers to 1981 page numbers.

## 23 CFR (4-1-85 Edition)

### 23 CFR—Continued

| Chapter I—Continued                                                         | 45 (46†) FR<br>Page |
|-----------------------------------------------------------------------------|---------------------|
| (a)(2) amended.....                                                         | 69400               |
| 476.2 (Subpart A) Revised.....                                              | 69396               |
| 476.100—476.110 (Subpart B)                                                 |                     |
| Removed.....                                                                | 69396               |
| 476.200—476.212 (Subpart C)                                                 |                     |
| Removed.....                                                                | 69396               |
| 476.300—476.314 (Subpart D)                                                 |                     |
| Revised.....                                                                | 69397               |
| 625 Incorporation by reference approvals.....                               | †19660              |
| 630.106 (b) redesignated as (c); new (b) added.....                         | 58036               |
| (b) and (c) redesignated as (c) and (d); new (b) added.....                 | †5717               |
| (b) effective date deferred...†10707,                                       | 10907               |
| (b) effective date deferred to 6-30-81.....                                 | †19233              |
| 630.110 (b) through (g) redesignated as (c) through (h); new (b) added..... | 58036               |
| 630.112 (a) through (f) redesignated as (b) through (h); new (a) added..... | 58037               |
| 630.114 (a) through (g) redesignated as (b) through (h); new (a) added..... | 58037               |
| 635.410 (d) added; emergency.....                                           | 75644               |
| 655.601—655.607 (Subpart F)                                                 |                     |
| Revised.....                                                                | †2039               |
| Effective date deferred...†10707,                                           | 10907               |
| Revision removed.....                                                       | †19232              |
| 656 Revised.....                                                            | †2299               |
| Effective date deferred...†10707,                                           | 10907               |
| Revision removed.....                                                       | †19232              |
| 657 Added.....                                                              | 52368               |
| Technical correction.....                                                   | 55716               |
| 658 Removed.....                                                            | 64491               |
| 658.9 Removed.....                                                          | 52368               |
| Technical correction.....                                                   | 55716               |
| 659 Added.....                                                              | 64491               |
| 663 Revised.....                                                            | 20918               |
| Incorporation by reference approvals.....                                   | †19660              |
| 765 Removed.....                                                            | †9570               |
| Removal effective date deferred.....                                        | †10707, 10907       |
| 770 Revised.....                                                            | †8429               |
| 771 Revised.....                                                            | 71977               |
| 771.117 (b) corrected.....                                                  | 85449               |
| 771.131 Corrected.....                                                      | 85449               |
| 771.133 (a) corrected.....                                                  | 85449               |

NOTE: Symbol (†) refers to 1981 page numbers.

### 23 CFR—Continued

| Chapter I—Continued                             | 45 (46†) FR<br>Page |
|-------------------------------------------------|---------------------|
| 777 Added; interim.....                         | 50730               |
| Chapter II                                      |                     |
| 1204 Incorporation by reference approvals.....  | †19660              |
| 1204.4 Supplement B amended.....                | 58037               |
| 1217 Added.....                                 | 84038               |
| Preapplication deadline extended to 3-1-81..... | †7953               |
| 1217.6 (a) corrected.....                       | †32                 |
| 1251 Added.....                                 | 59145               |
| 1252 Added.....                                 | 47145               |

## 1981-1982

(Regulations published April 1, 1981 through March 31, 1982)

### 23 CFR

46 (47Δ) FR  
Page

#### Chapter I

|                                                                                                      |              |
|------------------------------------------------------------------------------------------------------|--------------|
| Chapter I Policy statement.....                                                                      | 49842        |
| Policy statement clarification.....                                                                  | 55252        |
| 1.34 Revised.....                                                                                    | 21156        |
| 12 Revised; eff. 4-12-82.....                                                                        | Δ10522       |
| 140.607 (a) and (b) amended.....                                                                     | 21156        |
| 140.608 (b) and (e) amended.....                                                                     | 21156        |
| 140.609 Amended.....                                                                                 | 21156        |
| 160.103 (d) amended.....                                                                             | 21156        |
| 230.101—230.121 (Subpart A) Appendixes A through G transferred from 230.201—230.209 (Subpart B)..... | 21156        |
| 230.201—230.209 (Subpart B) Appendixes A through G transferred from 230.101—230.121 (Subpart A)..... | 21156        |
| 450.100—450.122 (Subpart A) Effective date deferral republished.....                                 | 33514, 34564 |
| Revised; interim.....                                                                                | 40176        |
| 450.200 (b) effective date deferred to 7-31-81.....                                                  | 33514        |
| (b) effective date deferral republished.....                                                         | 34564        |
| (b) amended; interim.....                                                                            | 40176        |
| 450.202 Nomenclature change and (c) effective date deferred to 7-31-81.....                          | 33514        |
| Nomenclature change and (c) effective date deferral republished.....                                 | 34564        |
| Nomenclature changes; interim.....                                                                   | 40176        |

NOTE: Symbol (Δ) refers to 1982 page numbers.

## List of CFR Sections Affected

### 23 CFR—Continued

46 (47A) FR  
Page

|                                                                                   |        |
|-----------------------------------------------------------------------------------|--------|
| Chapter I—Continued                                                               |        |
| 50.204 Nomenclature change effective date deferred to 7-31-81.....                | 33514  |
| Nomenclature change effective date deferral republished.....                      | 34564  |
| Nomenclature change; interim.....                                                 | 40176  |
| 50.206 Nomenclature changes and (b) effective date deferred to 7-31-81.....       | 33514  |
| Nomenclature change and (b) effective date deferral republished.....              | 34564  |
| Nomenclature changes; interim.....                                                | 40176  |
| 50.300—450.320 (Subpart C) Effective date deferred to 7-31-81.....                | 33514  |
| Effective date deferral republished.....                                          | 34564  |
| Revised; interim.....                                                             | 40176  |
| 76.302 (b)(7) added.....                                                          | 45603  |
| 90.107 (e) removed; (f) redesignated as (e).....                                  | 42266  |
| 11 Added.....                                                                     | 59534  |
| 11.3 (e) corrected.....                                                           | 46266  |
| 20 Removed; regulations transferred to 511.....                                   | 59534  |
| 22 Removed; regulations transferred to 511.....                                   | 59534  |
| 24 Removed; regulations transferred to 511.....                                   | 59534  |
| 30 Removed; regulations transferred to 511.....                                   | 59534  |
| 40 Removed; regulations transferred to 511.....                                   | 59534  |
| 42 Removed; regulations transferred to 511.....                                   | 59534  |
| 44 Removed; regulations transferred to 511.....                                   | 59534  |
| 60 Removed; regulations transferred to 511.....                                   | 59534  |
| 125 Interpretations.....                                                          | 34564  |
| Incorporation by reference approvals.....                                         | 413680 |
| 30.106 (b), (c), and (d) effective date deferred to 7-31-81.....                  | 33514  |
| (b), (c), and (d) effective date deferral republished.....                        | 34564  |
| (b) removed; (c) and (d) redesignated as (b) and (c); (46 FR 5717 withdrawn)..... | 40173  |
| 650.607 (a)(1)(ii) amended.....                                                   | 21157  |
| 652.7 (d) amended.....                                                            | 21157  |

NOTE: Symbol (Δ) refers to 1982 page numbers.

### 23 CFR—Continued

46 (47A) FR  
Page

|                                                       |        |
|-------------------------------------------------------|--------|
| Chapter I—Continued                                   |        |
| 655 Interpretations.....                              | 34565  |
| 655.601—655.607 (Subpart F) Technical correction..... | 21157  |
| 656 Technical correction.....                         | 21157  |
| 659.9 (a) revised.....                                | 21157  |
| 659 Appendix removed.....                             | 21157  |
| 660 Added (eff. 4-12-82).....                         | 10522  |
| 662 Removed.....                                      | Δ8172  |
| 665 Removed.....                                      | 35502  |
| 668.203 (f) amended; (i) revised.....                 | Δ10529 |
| 668.205 Amended.....                                  | Δ10529 |
| 668.209 Amended.....                                  | Δ10529 |
| 668.211 Amended.....                                  | Δ10529 |
| 668.213 Amended.....                                  | Δ10529 |
| 668.215 Amended.....                                  | Δ10529 |
| 712.703 Amended.....                                  | Δ10529 |
| 740.74 (c)(4) revised.....                            | Δ6619  |
| 740 Appendix A revised.....                           | Δ6619  |
| 920.7 (c) amended.....                                | 21157  |
| Chapter II                                            |        |
| 1204 Incorporation by reference approvals.....        | Δ13680 |

## 1982

(Regulations published from April 1, 1982 through December 31, 1982)

### 23 CFR

47 FR  
Page

#### Chapter I

|                                                                                |       |
|--------------------------------------------------------------------------------|-------|
| 140.906 (b) revised.....                                                       | 33955 |
| 140.910 (a) revised.....                                                       | 33955 |
| 140.912 (b) revised.....                                                       | 33955 |
| 140.900—140.922 (Subpart I) Appendix A removed.....                            | 33955 |
| 200.15 Removed.....                                                            | 47239 |
| 420 Policy statement.....                                                      | 49965 |
| 511 Policy statement.....                                                      | 49965 |
| 625 Limitation of general operating expenses.....                              | 40791 |
| Interpretations.....                                                           | 47240 |
| 625.2 Added.....                                                               | 25274 |
| 625.3 (a)(13) revised.....                                                     | 13796 |
| (a)(6) through (20) redesignated as (a)(7) through (21); new (a)(6) added..... | 25274 |
| 626 Interpretations.....                                                       | 47240 |
| 626.5 (a) amended.....                                                         | 13796 |
| 626.7 (d) amended.....                                                         | 13796 |
| 630.110 (c)(2) and (e)(2)(i) revised.....                                      | 47239 |
| 630.114 (h)(3) amended.....                                                    | 47239 |
| 630.1010 (a)(5) revised.....                                                   | 21780 |

**23 CFR—Continued**

|                                                                                                           | 47 FR<br>Page |
|-----------------------------------------------------------------------------------------------------------|---------------|
| Chapter I—Continued                                                                                       |               |
| 635.113 Revised.....                                                                                      | 36634         |
| 635.309 (d) revised.....                                                                                  | 47239         |
| 640.103 (a) removed; (b) through (d) redesignated as (a) through (c).....                                 | 47239         |
| 640.109 (a)(2)(ii)(A) amended; (b)(1) revised.....                                                        | 47239         |
| 640.111 (b) revised.....                                                                                  | 47239         |
| 642.109 (a)(2) amended.....                                                                               | 47239         |
| 646.107 Amended.....                                                                                      | 33955         |
| 646.111 (a) revised.....                                                                                  | 33955         |
| 646.113—646.127 Removed.....                                                                              | 33955         |
| 646.212 (b)(1) amended.....                                                                               | 33955         |
| 646.214 (b) revised.....                                                                                  | 33955         |
| 646.216 (d)(3)(ii) amended.....                                                                           | 33956         |
| 646 Appendix A removed.....                                                                               | 33955         |
| 650.109 Introductory text amended; introductory text, (a), and (b) redesignated as (a), (b), and (c)..... | 47239         |
| 652.3 (f) through (j) redesignated as (g) through (k); (a) through (e) revised; new (f) added.....        | 50471         |
| 652.11 Added.....                                                                                         | 50471         |
| 656 Revised.....                                                                                          | 43024         |
| 659 Interpretation.....                                                                                   | 49966         |
| 663.7 Revised.....                                                                                        | 50471         |
| 740.35 (c) and (d) amended.....                                                                           | 47240         |
| 771 Authority citation.....                                                                               | 47240         |
| 771.101 Amended.....                                                                                      | 21783         |
| 771.109 (d) added.....                                                                                    | 21783         |
| 771.111 Heading revised; (h) redesignated as (i); new (h) added.....                                      | 21783         |
| 771.119 (b) amended; (e) revised.....                                                                     | 21783         |
| 771.123 (b) amended; (h) revised.....                                                                     | 21783         |
| 772 Revised.....                                                                                          | 29654         |
| Heading corrected.....                                                                                    | 33956         |
| 790.2 (a) revised.....                                                                                    | 21783         |
| 795 Removed.....                                                                                          | 21783         |
| Chapter II                                                                                                |               |
| 1205 Added.....                                                                                           | 15120         |
| Internal orders.....                                                                                      | 40791         |
| 1252.4 Revised; eff. 10-1-83.....                                                                         | 15121         |
| 1252.5 (a) and (b) revised; eff. 10-1-83.....                                                             | 15121         |

**1983****23 CFR**48 FR  
Page**Chapter I**

|                                                                                             |                                                                            |
|---------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| Chapter I Policy statement.....                                                             | 5210, 14844, 17347, 20022, 21317, 23182, 24852, 25181, 31588, 35388, 39222 |
| Policy statement meetings.....                                                              | 5720, 6103                                                                 |
| Policy statement supplementa-ry.....                                                        | 10057                                                                      |
| 140.301—140.313 (Subpart C) Added.....                                                      | 9001                                                                       |
| 140.601—140.612 (Subpart F) Revised.....                                                    | 54971                                                                      |
| 140.900—140.922 (Subpart I) Effectiveness of prior provisions extended to 3-31-84.....      | 44064                                                                      |
| 420.300—420.310 (Subpart C) Removed.....                                                    | 29274                                                                      |
| 450.100—450.114 (Subpart A) Revised.....                                                    | 30339                                                                      |
| 450.200—450.206 (Subpart B) Redesignated as 450.300—450.306 (Subpart C).....                | 30340                                                                      |
| 450.200—450.212 (Subpart B) Redesignated from 450.300—450.320 (Subpart C) and re-vised..... | 30340                                                                      |
| 450.300—450.306 (Subpart C) Redesignated from 450.200—450.206 (Subpart B).....              | 30340                                                                      |
| 450.300—450.320 (Subpart C) Redesignated as 450.200—450.212 (Subpart B) and re-vised.....   | 30340                                                                      |
| 476.600—476.612 (Subpart G) Removed.....                                                    | 55844                                                                      |
| 625 Rule-related notice.....                                                                | 27539                                                                      |
| 625.2 (b) and (c) amended.....                                                              | 13412                                                                      |
| 625.3 (c)(1) revised.....                                                                   | 1051, 54339                                                                |
| 630.701—630.710 (Subpart G) Revised.....                                                    | 54974                                                                      |
| 630.706 Footnote 1 corrected.....                                                           | 56215                                                                      |
| 635.104 (a) and (b) amended.....                                                            | 22912                                                                      |
| 635.105 (b)(2) revised.....                                                                 | 22912                                                                      |
| 635.124 (a)(1) revised; (a)(2) and (d) amended.....                                         | 16483                                                                      |
| 635.201 Revised.....                                                                        | 22912                                                                      |
| 635.202 Revised.....                                                                        | 22912                                                                      |
| 635.203 (e) added.....                                                                      | 22912                                                                      |
| 635.204 Revised.....                                                                        | 22912                                                                      |
| 635.205 Heading, (a)(1), (b), and (c) revised; (a)(2) amended.....                          | 22913                                                                      |
| 635.309 (e) revised.....                                                                    | 22913                                                                      |

# List of CFR Sections Affected

## 13 CFR—Continued

48 FR  
Page

### Chapter I—Continued

|                                                                                                                                                                 |       |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| 135.410 (b)(2), (3), (4), and (5), (d)(1) introductory text, and authority citation revised; (b)(6) added; (c) and (d)(2) amended; eff. to 9-30-83.....         | 1947  |
| (a) amended; (b)(1) removed; (b)(2) through (6) redesignated as (b)(1) through (5); new (b)(4) revised; eff. to 9-30-83; comment time extended.....             | 23633 |
| (a) amendment; (b)(1) removal; (b)(2) through (6) redesignation as (b)(1) through (5); and new (b)(4) revision interim effectiveness extended; (c) revised..... | 44776 |
| Revised.....                                                                                                                                                    | 53104 |
| (b)(1) correctly revised.....                                                                                                                                   | 55452 |
| 45.107 (h)(3) amended.....                                                                                                                                      | 1948  |
| 50.113 (b) removed.....                                                                                                                                         | 29274 |
| 50.701—650.709 (Subpart G) Added.....                                                                                                                           | 52296 |
| 50.707 (a) corrected.....                                                                                                                                       | 53407 |
| 55 MUTCD amended; incorporation by reference.....                                                                                                               | 54336 |
| 55.601—655.607 (Subpart F) Revised.....                                                                                                                         | 46776 |
| 63 Removed.....                                                                                                                                                 | 55844 |
| 20.201 (d)(2) revised.....                                                                                                                                      | 31637 |
| 40.55 (c)(3) revised.....                                                                                                                                       | 34258 |
| 40.56 (b)(3)(iii) revised.....                                                                                                                                  | 34258 |
| 40.118 (e)(2) removed; (e)(3) redesignated as (e)(2) and amended.....                                                                                           | 29274 |
| 52.1 Revised.....                                                                                                                                               | 38610 |
| 52.5 (b) through (e) redesignated as (d) through (g); new (b) and (c) added; new (g) revised.....                                                               | 38611 |
| 52.8 (c)(5) revised.....                                                                                                                                        | 38611 |
| 52.11 (d) amended.....                                                                                                                                          | 38611 |
| 20.7 (b) revised.....                                                                                                                                           | 44066 |
| 24.7 Revised.....                                                                                                                                               | 44066 |
| 24.11 Revised.....                                                                                                                                              | 44066 |
| Chapter II                                                                                                                                                      |       |
| 209 Added.....                                                                                                                                                  | 5553  |
| 209.4 (a)(3) correctly revised.....                                                                                                                             | 31197 |
| 209.5 (a)(1), (b)(1), and (c)(1) correctly revised.....                                                                                                         | 31197 |
| 209.6 (b)(1) and (5) correctly revised.....                                                                                                                     | 31197 |

1984

## 23 CFR

49 FR  
Page

### Chapter I

|                                                                                   |       |
|-----------------------------------------------------------------------------------|-------|
| 16 Removed.....                                                                   | 32572 |
| 140.713 (a)(1) revised.....                                                       | 45578 |
| 140.801—140.807 (Subpart H) Revised.....                                          | 45578 |
| 625.3 (c)(1) revised.....                                                         | 38943 |
| 626.5 (b) amended.....                                                            | 1895  |
| 626.7 (c) revised; (d) removed; (e) redesignated as (d) and revised.....          | 1895  |
| 630.304 (c)(2), (3) introductory text, (6) and (7) amended; OMB number added..... | 33008 |
| 630.301—630.306 (Subpart C) Appendix C revised.....                               | 33009 |
| 635.107 (h)(1) revised.....                                                       | 28550 |
| 635.118 Removed.....                                                              | 24375 |
| 635.124 (a) revised.....                                                          | 14729 |
| 635.309 (c)(3) revised.....                                                       | 28550 |
| 635.410 (b)(1) through (4), (c)(1)(i) and authority citation revised.....         | 18821 |
| 650.501—650.515 (Subpart E) Revised.....                                          | 1486  |
| 650.601—650.609 (Subpart F) Revised.....                                          | 1181  |
| 652 Revised; eff. 4-23-84.....                                                    | 10662 |
| 652.7 (a) corrected.....                                                          | 14729 |
| 655.310 (c) revised.....                                                          | 1896  |
| 655.401—655.411 (Subpart D) Revised; eff. 4-2-84.....                             | 8436  |
| 658 Added.....                                                                    | 4205  |
| Revised.....                                                                      | 23315 |
| 660.107 Revised.....                                                              | 40011 |
| 660.501—660.519 (Subpart E) Revised.....                                          | 21924 |
| 752.11 Revised.....                                                               | 1896  |
| Chapter II                                                                        |       |
| 1209 Redesignated as Part 1309.....                                               | 10664 |
| 1213 Removed.....                                                                 | 10664 |
| 1214 Removed.....                                                                 | 10664 |
| 1215 Removed.....                                                                 | 10664 |
| 1217 Redesignated as Part 1317.....                                               | 10664 |
| Chapter III                                                                       |       |
| Chapter established.....                                                          | 10664 |
| 1309 Redesignated from Part 1209.....                                             | 10664 |
| 1309.4 OMB number.....                                                            | 10665 |
| 1317 Redesignated from Part 1217.....                                             | 10664 |

**23 CFR (4-1-85 Edition)**

**1985**

(Regulations published from January  
1, 1985 through April 1, 1985)

**23 CFR**

50 FR  
Page

**Chapter I**

625.3 (c)(1) revised; eff. 7-22-85...10004

**23 CFR—Continued**

**Chapter I—Continued**

50 FR  
Page

655 MUTCD amended; incorpo-  
ration by reference; eff. 7-22-  
85.....10001  
667 Revised; eff. 4-17-85..... 10756

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